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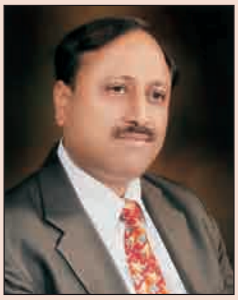
EDITORIAL

Indian CA Firms: Gaining Momentum


CA Vinod Jain*

The Indian profession of Chartered Accountants has in recent past faced a large number of challenges including aspersions on their integrity and independence arising out of certain large scale financial frauds and manipulation of financial statements by banks, investment banks and large companies outside India including companies like Satyam in India. The Institute of Chartered Accountants of India have severely punished those who were found guilty in various financial frauds and even removed certain chartered accountants found guilty for Satyam scam for their life from the membership of the Institute. Most of these corporate failures did not had any Indian origin CA firm as their Auditors.

Indian origin chartered accountant firms, barring certain insignificant exceptions, have proved that they had been sincerely following the basic principles of code of conduct, code of ethics and tough professional standards with independence, integrity and excellence.

It has been noticed during last 3 decades a number of public sector companies, the government, large public sector banks appoint their consultants and international GAAP Auditors from among large multinational brands on the basis of their size or international experience. Even large private sector companies and institutions have an apprehension in mind that Private equity funds, venture capital fund, large investing institutions, high net worth individuals and foreign institutional investors may not give adequate weightage to Indian origin CA Firms.

It is a matter of great satisfaction that all the Indian origin Chartered Accountant Firms have gained tremendous momentum during last 10 years not only in delivery infrastructure, size, geographical spread and have gained very deep expertise, experience and technology in all professional areas. The Indian origin chartered accountant firms are fully geared up to take on any challenging consulting, taxation and audit assignment to meet to the expectations of all kind of investors & other stake holders.

The Indian chartered accountant firms have very good infrastructure, library and research material in addition to very deep professional aptitude to deliver professional service in an excellent manner. The major difference, the Indian origin chartered accountant firms are making is in their commitments to their clients' interest with complete client ownership. The clients of Indian CA firms consult them on all strategic, professional, structural, personal and even family matters. The sustained growth of the clients with full justice to all stake holders in a transparent and independent manner is the biggest asset of the Indian origin chartered accountant firms. The Indian industrial and service sector are making large investments worldwide and in spite of their compulsion to take service from local chartered accountants/CPA, Indian origin clients are invariably taking the strategic support and professional services from an Indian origin Chartered Accountant firm.

Even the large multinational corporations working in India have developed great confidence in Indian origin chartered accountant firms not only because of their professional commitment, professional capability and expertise but also because of special skill and higly efficient and effective professional technology, which Indian origin chartered accountant firms have been able to apply as an expert.

The Indian origin chartered accountant firms have a special expertise in the area of audit and once a senior Indian chartered accountant reviews the financial statement, undertakes ledger scrutiny and examine relevant evidence, their professional excellence always provide a 100% guarantee against fraud, manipulation and mis statement.

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LATEST IN FINANCE

1.0 WPI at 1.77% - 5 YEAR Low

Falling food and commodity prices saw wholesale inflation easing to a five-year low in October.

2.0 Gujarat offers 100% subsidy on CST under new electronics policy

As per the newly announced electronics policy, among other sops, the Government will offer 100 per cent subsidy on Central Sales Tax (CST) and VAT refund equal to 90 per cent of capital investment made for expansion of the existing manufacturing units.

3.0 Easier Exit Rules for highway developers

To relax exit policy rules for road projects, the Govt. has decided to allow Road developers to sell their completed or stuck project, which will free them up to invest in other projects.

Currently, developers have to hold at least 26% stake in highway projects.The proposed change will be applicable for highway projects signed up before 2009 as well.

4.0 Small Mineral Miners - Green nod by States

Mineral mines operating on less than five hectares in a critically polluted, protected or eco-sensitive zone can get green nod from states.

5.0 ECB proceeds can be kept as Fixed Deposits for 6 months

The Reserve Bank of India (RBI) has eased the norms for parking external commercial borrowings (ECBs) to allow companies to keep them as fixed deposits for six months for use at a later stage.

6.0 Fiscal relief for India as OPEC maintains output

Crude oil prices are set to decline further, with the Organization of the Petroleum Exporting Countries (OPEC) deciding to maintain output at 30 million barrels per day, resisting calls from Venezuela that the group stem the slide in prices.

7.0 NPV of Coal Blocks may be set at twice the domestic price

The government is likely to set the benchmark for determining net present value of coal blocks earmarked for auction at double the price of domestic coal, according to a senior official.

This assumes importance as 90% of net present value (NPV) of a tonne of coal will be the floor price for auctioning the blocks and 10% of the total NPV of the block will have to be paid up-front by the highest bidder. NPV is the current valuation of future earnings from a coal block.

8.0 Railways opens ₹12,000-crore worth projects for Private, Foreign Investment

The Railways is opening up for investment by foreign and domestic players sanctioned projects worth ₹12,000 crore.

This amount would go up if one were to add the high-speed rail link projects costing almost ₹ 77,000 crore which are yet to be sanctioned and some projects - such as the North-South freight corridor and passenger terminal development of several stations - whose costs are yet to be worked out.

9.0 Major Ports to form Company for last-mile connectivity

To put port connectivity works on a fast track, 12 Indian ports will pool the resources to set up a new company. The Union government is set to clear a proposal for creation of a Port Infrastructure Vikas Nigam Ltd.

The company will construct, operate and maintain rail and road infrastructure to facilitate connectivity for transportation of goods from ports in India or abroad.

10.0 RBI cautions firms on raising money abroad

Noting some companies are routing funds raised abroad to India by flouting the norms in this regard, RBI has asked banks not to give guarantees to companies for such borrowing and non compliance will lead to penal action. Some companies are accessing the markets abroad for debt funds through foreign arms - holding company, associate, subsidiary or group companies. This money is routed to the Indian company which accounts for the sole or major operations of the group, RBI said in a communication to banks. Such funds are raised at rates exceeding the ceiling applicable under the foreign exchange management regulations. These companies use different methods and structures for channeling such funds for Indian operations, including investment in rupee bonds floated by Indian company.

11.0 Power Projects - Revival being worked out

According to Association of Power Producers, a grouping of private power companies, projects of 136,000 MW involving a capital outlay of over

₹ 620,000 crores have been affected due to various factors. A Panel headed by India Infrastructure Finance Company Chairman Santosh B Nayar has looked into their demands on ways to rescue the stressed assets and has submitted its recommendations to the finance ministry:

- For projects stuck in court cases, the account may be allowed to continue as "standard" till a final settlement is reached.
- For existing projects, delayed beyond two years, the provisioning by banks should be kept at 0.4 per cent instead of 5 per cent that is required at present. The panel also said that all viable projects may be allowed a one-time dispensation for refinancing with an extension in the repayment tenure.
- In order to tackle the issue of funding of cost overruns, the lenders may be allowed to decide on the quantum of funding and revise the repayment schedule.
- The power ministry should come out with a policy on long-term fuel linkage for projects whose coal blocks have been cancelled.

12.0 New Depository Scheme from December 15

Indian corporates, both listed and unlisted, would be able to raise money through depository receipts in 34 foreign jurisdictions including Argentina, Australia, Brazil, China, Finland, France, Greece, Iceland, Ireland and Italy, from December 15.

13.0 SEBI allows Foreign VCs to Finance Core Investment Firms

SEBI plans to allow foreign venture capital investors (FVCI) to invest in core investment companies (CIC) which fund the infrastructure sector.

CICs are companies which have their assets predominantly as investments in shares for holding stake in group companies which is neither for trading nor for carrying on any other financial activity.

Real Estate FDI Relaxed

FDI in Construction Development: Townships, Housing, Built-up infrastructure

- Minimum area to be developed under each project would be as under:
  - In case of development of serviced plots, no minimum land area requirement.
  - In case of construction-development projects, a minimum floor area of 20,000 sq. meter.
- Minimum FDI of US$ 5 million within six months of commencement of the project. Subsequent tranches of FDI can be brought till the period of ten years from the commencement of the project or before the completion of project, whichever expires earlier.
- The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.
- The Government may, in view of facts and circumstances of a case, permit repatriation of FDI or transfer of stake by one non-resident investor to another non-resident investor, before the completion of project. These proposals will be considered by FIPB on case to case basis.
- The Indian Investee company will be permitted to sell only developed plots.
- It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).
- The conditions of minimum area or minimum FDI or exit, will not apply to Hotels & Tourist resorts; Hospitals; Special Economic Zones (SEZs); Educational Institutions, Old Age Homes and Investment by NRIs.
- The conditions of minimum area or minimum FDI, will also not apply to investee/joint venture companies which commit at least 30 percent of the total project cost for low cost affordable housing.
- Project using at least 40% of the FAR/FSI (Floor Area Ratio/ Floor Space Index) for dwelling unit of floor area of not more than 140 square meter will be considered as Affordable Housing Project for the purpose of FDI policy in Construction Development Sector. Out of the total FAR/FSI reserved for Affordable Housing, at least one-fourth should be for houses of floor area of not more than 60 square meter.
- It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.

DIRECT TAXATION

1.0 Advance Pricing-becoming reality

Mitsui, Toyota and Marubeni are likely to be among Japanese companies that would sign the first set of bilateral advance-pricing agreements (APA) with India shortly. These agreements will provide certainty to Japanese multinational firms operating in India and avoid conflicts over sharing of taxes between India and that country.

What is an APA?

An agreement between a taxpayer and the tax authority over the methodology to be used for computing the arm's-length price of transactions carried out among group firms

What are bilateral APAs?

Those involving a taxpayer, the Indian tax authority and a foreign tax authority

Which are the big firms locked in transfer-pricing disputes?

Vodafone, Shell, Microsoft, IBM, Maruti, Gillette, Bharti Airtel, Essar, Standard Chartered, HSBC Securities & Capital Markets, Havells, Nokia.

2.0 SEBI takes first step to 'Single Record' for all Financial Assets

A single consolidated view of all investments made by a person in mutual funds and other securities held in demat form would be provided from March 2015.

AMCs/MF-RTAs (Asset Management Companies/ Mutual Fund-Registrar & Transfer Agents) would have to provide the data with respect to the common PANs to the depositories within three days from month end.

3.0 Shell wins transfer-pricing tax dispute in Bombay HC

What the case is all about: It relates to the issue of 8.7 crore shares by Shell India Markets Pvt Ltd to its overseas parent company Shell Gas BV in March 2009. The shares were issued at ₹ 10 a share, which the income-tax authorities contested and pegged higher at ₹ 180 a share. The I-T Department charged Shell India of under-pricing a share transfer within the group by ₹ 15,220 crore, and consequently evading taxes.

How the case evolved: Shell India moved the Bombay High Court contesting that the issue of shares was capital transaction and out of the transfer pricing bracket.

The High Court ruled in favour of Shell. The order will have an impact on other multinationals fighting the tax department on similar grounds. The government is not likely to appeal further, in line with its decision to reduce tax litigation. Vodafone case was also decided in favour of tax payer, which had similar facts.

4.0 Money paid under consent settlement can be treated as business expense

The Income Tax Appellate Tribunal (ITAT) has clarified that money paid under the consent decree mechanism to settle disputes is permissible as business expenditure and cannot be equated to penalty levied for breaching law.

5.0 Money paid under consent settlement can be treated as business expense

Section 40A(2) - Excessive or unreasonable payments of Salary to director

The High Court of Delhi has held that where due to efforts of director of assessee-company, business of assessee had increased substantially and he was assisting assessee in its new hotel project, excessive salary payment to him was reasonable.

Commissioner of Income-tax-III vs. Spank Hotels Ltd., [2014] 50 taxmann.com 452 (Delhi)

INDIRECT TAXATION

1.0 Clarification regarding availment of CENVAT credit after six months

It is clarified that in each of the below mentioned three situations, the limitation of six months would apply when the credit is taken for the first time. It would not apply for taking re-credit of amount reversed in case of the following:

- If the payment of value of input service and service tax payable is not made within three months of date of invoice, bill or challan, then the CENVAT Credit availed is required to be paid back by the manufacturer or service provider. Subsequently, when such payment of value of input service and service tax is made, the amount so paid back can be re-credited.
- According to Rule 3(5B) of CCR, 2004, if the value of any input or capital goods before being put to use on which CENVAT Credit has been taken, is written off or such provisions made in Books of Account, the

manufacturer or service provider is required to pay an amount equal to credit so taken. However, when the inputs or capital goods are subsequently used, the amount so paid can be re-credited in the account.

- Rule 4(5)(a) of CCR, 2004 prescribes that in case inputs sent to job worker are not received back within 180 days, the manufacturer or service provider is required to pay an amount equal to credit taken on such inputs in the first instance. However, when the inputs are subsequently received back from job worker, the amount so paid can be re-credited in the account.

2.0 Proposed changes in GST norms

Key difference in the consitution amendment Bills of 2011 and 2014

	2011	2014
Entry Tax	After introduction of GST, entry tax levied by local bodies will stay	GST will sub-sume all kinds of entry tax
Petroleum products	Will be kept out of GST, with a provision in the Constitution	To be included in GST at zero rate; states can continue to apply VAT
Dispute settlement authority	To adjudicate Centre-state disputes resulting in any loss of revenue	No such authority to settle disputes; GST Council to decide

3.0 Panel moots stiff 27% revenue-neutral GST

Proposal by states committee could negate benefits of new tax

Current Indirect Tax Rates (%)		
Central Excise (median)	Service Tax	VAT
12	12	4-5, 12.5-14.5*

GST/RNR (%) suggested by	Central GST	State GST
Panel set up by empowered committee of state FM$^{\#\#}$	12.77	13.91
NIPFP	-	12-20$^{\#}$
13^{th} Finance Commission Task Force	5	7
Kelkar Committee on Fiscal Consolidation	8	6**

**The lower rate is on essential items called merit goods, while the higher standard rates apply on all other goods, he weighted average rate is around 11%. ** Kelkar said though RNR for states would be 6%, they could be allowed to levy SGST at 7%. #Combined rate for central and state GSTs ##A panel of central and state officials, which reviewed an earlier report of NIPFP.*

4.0 States disrupting VAT chain

Punjab: Tax only at first point of sales for TVs, cold drinks, refrigerators, etc

Gujarat: Limited input tax credit, none on naphtha

Kerala: Turnover tax of 2% on textiles

Tamil Nadu: Input tax credit only within the state

Maharashtra: No input tax credit on crude oil

5.0 Telecom service providers won't get credit for taxes on towers

Mobile phone operators like Vodafone, Reliance Communications and Idea will not be able to claim credit for the excise duty paid on the items used in their towers to meet the final service charge liability with the Central Board of Excise and Customs (CBEC) asking all field officers to deny the facility.

CORPORATE & ECONOMIC LAW

1.0 Companies (Amendment) Bill, 2014

The Government has tabled the Companies (Amendment) Bill before the Parliament.

The bill proposes punishment for illegal money pooling activities, amid rising instances of people getting duped by such fraudulent schemes. Besides, the changes pertain to related party transactions, fraud reporting by auditors, public inspection of board resolutions, responsibilities of audit committee, requirement of minimum paid-up share capital and strengthening of benches for hearing winding up cases.

Amendments have been proposed with regard to restrictions on bail, making common seal optional and jurisdiction of special courts to try offences.

2.0 No Stock Limits on Commodities in Regulated Warehouses: FMC

In a big relief to commodity futures market players, the government has exempted commodities kept in regulated warehouses from the purview of stock limits imposed by state governments to curb hoarding under the Essential Commodities Act.

3.0 Land acquisition will lapse for non-payments

The new land acquisition law has given a severe blow to governments which issue notifications of take-over, but do nothing for years and even deny payments to the land owners. If the delay is more than five years, even if caused by stay orders from courts, the acquisition will lapse.

4.0 Revival of a sick company to take precedence over recovery proceedings, SC rules

The Supreme Court has said that the revival of a sick company will take precedence over recovery proceedings. The provisions of the Sick Industrial Companies Act (SICA), 1985, will prevail over the Recovery of Debts Due to Banks and Financial Institutions (RDBB) Act, 1993, said a three-judge bench, headed by chief justice of India HL Dattu.

5.0 Ministry offers clarity on issuance of Foreign Currency Bonds

It is clarified by Minstry of Corporate Affairs (MCA) that the provisions related to prospectus and allotment of securities under the new companies law will not be applicable to foreign currency bonds that are issued exclusively to persons residing outside India. New FCCBs guidelines are being worked out by the ministry.

6.0 Contempt power only with High Courts

The Madras High Court last week ruled that subordinate courts cannot invoke the Contempt of Court Act to punish a person disobeying judicial orders. That power belongs only to the Supreme Court and the High Courts.

7.0 BIFR sole authority to move companies out of its supervision: Supreme Court

The Supreme Court has held that the Board for Industrial and Financial Reconstruction (BIFR) will continue to have jurisdiction over any sick company referred to the agency even if its net worth becomes positive. The board is also the sole authority to decide whether or not such a company can be moved out of its supervision, the court observed.

GhanshyamSarda vs. Shiv Shankar Trading Co. [2014] 51 taxmann.com 368 (SC)

8.0 Company Secretary to act as Compliance Officer: SEBI

Market regulator SEBI has mandated the appointment of Company Secretary as compliance officer for the purpose of the newly-framed listing regulations. The latest SEBI requirement widens the area of responsibilities of a Company Secretary and makes him solely responsible for compliance of listing regulations, according to capital market observers.

CAPITAL MARKET

1.0 NSE launches online complaint window

The NSE (National Stock Exchange) has put in place a system to register a complaint on its website. Investors/public has the option to provide details on the matter either anonymously or otherwise on violations/manipulations by market participants that may adversely affect the market quality and integrity.

2.0 SEBI tightens Delisting and Insider Trading Regulations

Delisting

- Delisting and buyback offer should be done through exchanges
- At least 25% of the total number of public shareholders will have to be sought by Cos
- Offer price will be based on an average of promoters' offer price and investors' tender price with a threshold of 90% of equity
- Promoter cannot make a delisting offer if group entity has sold shares within 6 months of the board meeting to decide delisting
- Option to the acquirer to delist directly through Delisting Regulations pursuant to triggering takeover regulations provided.

Insider Trading

- All persons and their immediate relatives with a contractual, fiduciary or employment relationship with the company, with access to unpublished price sensitive-information, included as insider
- Insider have to disclose trading plan on stock exchanges
- Directors and management prohibited from F&O trading
- The onus of proving that they were not in possession of the price-sensitive information has been put on them.

Mutual Funds

- AMCs, yet to meet with net-worth norm of ₹ 50 crores, can launch only two schemes a year.

LICENSING OF "SMALL FINANCE BANKS" IN THE PRIVATE SECTOR

Registration, Licensing and Regulations

- Small finance bank to be registered as a Public Limited Company under Companies Act, 2013.

Eligible Promoters

- Resident individuals/professionals with 10 years of experience in banking and finance; and Companies and Societies owned and controlled by residents
- Existing Non-Banking Finance Companies (NBFCs), Micro Finance Institutions (MFIs), and Local Area Banks (LABs) that are owned and controlled by residents can opt for conversion into small finance banks
- Joint ventures by different promoter groups for setting up small finance banks not permitted

Scope of Activities

- Can also become a Category II Authorised Dealer in foreign exchange business for its clients' requirements.
- Cannot set up subsidiaries to undertake non-banking financial services activities

Capital Requirement

- Minimum paid-up equity capital of Rs. 100 crore

Promoter's Contribution

- Promoter's minimum initial contribution to the paid-up equity capital at least be 40 per cent

Foreign Investment

- FDI upto a maximum of 74% of the paid-up capital

Prudential Norms

- Will be subject to all prudential norms and regulations of RBI as applicable to existing commercial banks including requirement of maintenance of CRR and SLR
- Required to extend 75 per cent of its Adjusted Net Bank Credit (ANBC) to the sectors eligible for classification as priority sector lending (PSL) by RBI
- Maximum exposure to a single/group obligor to be restricted to 10%/15% of its capital funds, respectively.

Corporate Governance

- The Board of the bank should have a majority of Independent Directors
- Bank should comply with the corporate governance guidelines including 'fit and proper' criteria for Directors as issued by RBI from time to time

Other Conditions

- If a promoter setting up a small finance bank desires to set up a Payment Bank, it should set up both types of banks under a Non-Operative Financial Holding Company (NOFHC) structure.
- However, a promoter will not be granted licences for both universal bank and small finance bank
- The small finance bank cannot be a Business Correspondent (BC) for another bank. However, it can have its own BC network.
- **Last Date for Application:** 16th January, 2015

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AUDIT

1.0 Public Sector Banks to get Autonomy on Appointment of Auditors

In order to give autonomy to the Public Sector Banks(PSBs) on the issue of selection and appointment of Statutory Central Auditors (SCAs), the work of selection and appointment of SCAs henceforth, has been delegated to individual PSBs for the year 2014-15 onwards.

2.0 ICAI terminates membership of Satyam auditors

The Institute of Chartered Accountants of India (ICAI) has terminated the membership of the auditors, internal auditors & accountants of Satyam Computer Services for whole life. The institute has also imposed a fine of ₹5 lakh on each of them. This is maximum punishment the ICAI can award for such misconducts.

FINANCIAL INDICATORS

	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.2399	0.2326	0.2346	0.23
3 Month MIBOR (%)	8.55	8.73	8.91	8.85
SENSEX	27831	27874.73	27057.41	25584
NIFTY	8355.65	8344.25	8094.1	7656
CRR (%)	4	4	4	4
REPO (%)	8	8	8	8
REVERSE REPO (%)	7	7	7	7
Gold (per 10 gm)	27220	25923	27285	25988.00
Silver (per kg)	38112	35007	41336	40230.00
Crude (USD/bbl)	64.24	82.13	97.13	110.22
₹ vs USD	61.95	61.4513	60.8256	59.28
₹ vs Euro	76.7499	76.6789	78.6597	80.30
₹ vs 100 Yen	51.98	53.86	57.12	57.95
₹ vs RMB	10.0319	10.0474	9.929	9.52
₹ vs Pound	97.1562	97.7567	98.1482	99.48
MCX Aluminium	121.95	125.4	122.35	111.35
MCX Copper	399.35	412	413.25	396.30

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

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Indian CA Firms: Gaining......

The international auditing practice and standards has been further fine- tuned by the Indian chartered Accountant firms based on complex ancient Indian accounting and Auditing techniques, technical skills inherited from thousands of years. They are able to ensure that there are no cases of fraud or manipulation which went unnoticed by them. The major difference that the Indian origin chartered accountant firms do not undertake any assignment only in a standard technical manner and actually review sampling, knowledge of business, applicable laws, internal control, delegation of powers, business processes, business acumen and dealing with highly confidential areas with unmatchable knowledge and skill of Indian origin chartered accountant.

Indian Prime Minister Mr. Narendra Modi has recently observed "Indian Government as well as Indian Companies and all other businesses have complete faith in Indian Chartered accountants because of their professional approach and commitment to serve efficiently and effectively."

The Indian origin chartered accountant firms need to come together and communicate their tremendous strength and advantages, as a class to not only international investors and multinational companies but also among Indian entrepreneurs, banks and institutions providing equity fund, venture capital fund and alternative investment fund, media, government and thinkers with various intellectual forum about deep expertise and capability of Indian origin chartered accountant firms as well as Indian chartered accountants. **The Chartered Accountant in Industry and CFOs have a special role** in having confidence on Indian CA firms and to effectively communicate this without hesitation as they will gain the maximum respect and support from Indian CA firms as a team to efficiently and effectively resolve all their issues.

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- Internal Audit - Silver®, Gold®, Platinum® & Diamond®
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