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EDITORIAL

INDIAN ECONOMY
THE SHOW MUST GO ON GROWTH PADDLE

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Convener National Economic Forum, Former Chairman BoS and Member Central Council Institute of Chartered Accountants of India

The monsoon session of parliament was over without transacting any meaningful business.In this process, the government could not get the constitutional amendment passed by Rajya Sabha (Lok Sabha has already passed the bill) to bring Goods and Service Tax (GST) to replace Excise, VAT and few other indirect taxes. Even the Land Acquisition Bill to facilitate Industrial Development and other public purposes was deffered on the recommendation of the joint parliamentary comittees.

Need for consensus: The Modi government needs to pursue pending legislations after considering opposition views with an open mind to enable consensus on major economic reforms. Patience, persuasion, reconciliation and moving further on discussion informally as well as formally with all political levels will be very important. The ruling party needs to give adequate respect to opposition in the real spirit and approach the issues with statesmanship, on the lines of Sh. Atal Bihari Vajpayee. This political diplomacy with genuine efforts can bring very good results in medium term.

Economic Issues: The government has taken significant positive policy measures very effectively and these will surely bring positive results in long run. The government is required to address several important issues on the agenda diplomatically, efficiently and effectively. There are large number of areas where subordinate legislations (Rule making), administrative guidlines and procedures and policy level changes can bring comprehensive growth and movement in the Indian Economy. Some of the suggested important areas include:-

Company Law: The government needs to exempt all private limited companies below ₹ 100 Crore networth or ₹ 1,000 crores turnover from most of the procedural and compliance sections.A detailed review need to be done by various committees. The overburdened compliances and its costs with the fear of prosecution on a simple non-compliance is not making it easy for the entrepreneurs to contribute to the growth of the nation. The governments tag ‘Ease of doing business’ is non-starter due to such over compliances.

Taxation: The Income Tax officials need to work upon non-tax payers instead of having a pre-notioned mind-set that ‘higher the tax payer, higher is the evasion’. Officials have now created fear of prosecutions in minds of the assesses who have deposited TDS late. Prosecutions is not the only way to force assesses to comply, a friendly approach need to be developed. The

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LATEST IN FINANCE

1.0 Cabinet extends capital subsidy for Electronics manufacturing

The government has extended the Capital Subsidy Scheme for electronics manufacturing firms by another five years to help the nascent industry to scale up domestic manufacturing to reduce dependence on imports. The scheme, implemented in July 2012 for a period of three years, provides capital subsidy of 20% in Special Economic Zones (SEZ) and 25% in non-SEZ units engaged in electronics manufacturing. The cabinet also expanded the scope of the scheme to benefit 15 new product categories.

2.0 RBI tightens NPA rule on credit card dues

It has been decided that, 'Past Due' status of a credit card account for the purpose of asset classification would be reckoned from the payment due date mentioned in the monthly credit card statement, the central bank said in *notification no. RBI/2015-16/126 dt. July 16, 2015.*

3.0 Banks can conduct Factoring

The Reserve Bank of India permitted banks to carry out the business of factoring departmentally, without obtaining its prior approval, subject to conditions.

What is Factoring ?

When a bank undertakes factoring, an enterprise sells its accounts receivable (invoices) to the bank at a discount. Later, the bank recovers money from the buyer on the maturity date of the invoices.

Comprehensive Policy

The RBI said banks may formulate a comprehensive factoring services policy with the approval of their Boards and offer the services to their customers in accordance with this policy.

Factoring services may be provided either with recourse or without recourse or on limited recourse basis. These services should be extended in respect of invoices which represent genuine trade transactions.

The pre-payment amount offered by banks for the receivables acquired under factoring should not exceed 80 per cent of the invoice value.

Upper Cap

Investment of a bank in the shares of factoring companies inclusive of its subsidiary carrying on factoring business will not, in the aggregate, exceed 10 per cent of the paid up capital and reserves of the bank.

4.0 Extended Value Added Services by Urban Co-operative Banks (UCBs)

Primary UCBs will now be permitted to offer services via ATM machine like Bill Payment, Account Transfer etc. at their on site/ off site/ mobile ATMs as listed.

Notification no. RBI/2015-16/139 dt. July 30, 2015

5.0 PSBs to get ₹ 70, 000 cr over four years.

Public sector banks (PSBs) will get ₹70,000 crore as capital over a period of four years. The first instalment of ₹25,000 crore has been marked for this fiscal.

- About 40% to be given this fiscal year to banks that requires support to raise their capital adequacy to 7.5%.
- 40% capital will be allocated to the top six banks: SBI, Bank of Baroda, Bank of India, PNB, Canara Bank and IDBI;
- 20% to be allocated to the banks based on their performance during the reminder of the next fiscal year. This will incentivise them to improve their performance.

(A Finance Ministry release)

DIRECT TAXATION

1.0 India and US sign FATCA as bulwark against black money

India and the United States, signed an agreement to implement Foreign Account Tax Compliance Act (FATCA) from October 1 of this year. The FATCA will enable and facilitate smoother exchange of tax-related information between the two countries, and help both fight evasion.

2.0 Airport services are contract - Section 194C will apply

The Supreme Courtof India has held that Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.

Japan Airlines Co. Ltd. v. CIT [2015] 60 taxmann.com 71

Editorial

Finance needs to be provided to all small and mid-sized entrepreneurs without insisting on collaterals.

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INDIAN ECONOMY....

entire approach of rule making, procedures, assessment, appeals and imposition of tax needs to be people friendly. The assessees need to be treated with faith and respect with a positive approach. Tax terrorism has to give way to tax friendly approach. The survey, searches and raids are to be highly restricted. The exemplary powers and discretion of the tax officials needs to be curtailed. Scrutiny cases need to be resolved without any personal contact but on an electronic platform.

Black Money: The government needs to bring down the tax rates and seek voluntary compliance by education. The restrictive and deeming provision including Section 50C, 56, 14A, 43CA, 269SS/T and many such sections need to be relooked into. Immediate amendment in rules can give the major relief. The various legislative attempts by the government has not been able to bring back black money but has only closed the channel of circulation and productive use of the money thereby negatively impacting economic activity, capital creation and growth of real estate, trading, manufacturing and service sector. The government need not question each transation and provide leeway and flexibility to genuine business transactions. It is imperative that Black Money generation must be stopped and all that, which has been created in the past must come out and put to productive use.

Sector Specific Issues: The sector specific issues need to be directly addressed by providing:-

- Fiscal Adjustment- Custom Duty, Excise and Duty Drawback within WTO Framework
- Vat and Service tax rates reduction
- Interest Subvention
- Infrastructure Support
- Policy Support
- Reschedulement of loans
- Infusion of Risk Capital

The seriously ailing sector like Sugar, Real Estate, Cement and SME Industries and service sector require immediate government support and action. The industry, services and agriculture all have suffered during UPA regime and Modi government now needs to act smartly and swiftly.

PSUs: There is immediate need to objectively assess the functioning of all PSUs, their relevance, feasibility and accountability of its management. Governance in PSUs must be much more transparent. It is understood that substantial number of PSUs need to revamp their Boards including appointment of Independent Directors.

Financial Institutions: Availability of low cost debt and risk capital is crucial to growth and development. State level and All India Financial Institutions need to be strengthened and beefed up with policy changes to channelize low cost resources to the businesses. The message has to be loud and clear that finance needs to be provided to all small and mid-sized entrepreneurs without insisting on collaterals. No credit exercise can be risk free and NPAs should not desist the government or financial institutions and banks for expansion of credit.

The lending need not be seen with suspicion and free hand at policy level as well as operational level needs to be given to bankers and lenders. SARFESAI and DRT are enough structures to recover genuine dues. Government has become a major stake holder besides financial institutions and investors. Exemptions from Corporate Governance measures may be given subject to safeguard of these stake holders.

Rules should be made to make the Substantive Law implementable and to prescribe procedures. However, government should resist dilution of substantive law through rules and notifications, like in the case of CSR. Any Law should be principle based instead of rule based. It is important that the lender's lending behaviour must give way to Development Banker's mind set. The government need not worry about it's criticism inside or outside the parliament. All genuine efforts to promote businesses and growth resulting into higher employment, health, education, housing, level of earning and living of common man will answer all criticism politically as well as on the ground. Chartered Accountants are committed to support this exercise by fine tuning the suggestions in a practical manner in the national interest. There is also a need to communicate to the masses, the steps being taken in their long term interest and that results shall be visible in near future.

3.0 Cash Credit- Retrospective proviso

The Kolkata Bench of ITAT has held that Proviso to Section 68 casting onus on closely held company to explain source of share capital is applicable with retrospective effect.

SubhlakshmiVanijya (P.) Ltd. v. Commissioner of Income-Tax-I, Kolkata [2015] 60 taxmann.com 60 (Kolkata - Trib.)

4.0 Settling quantum of tax paid mandatory

The High Court of Bombay has held that where there is some dispute with regard to the amount of tax deducted and amount of tax deposited and/or delay in deposit and/or the interest payable thereon then the passing of an order under section 201 of the Act before initiating penalty proceedings may be necessary. AO may pass combined order under sections 201 & 221 if the fact and quantum of delayed deposit of TDS is not disputed by the deductor-assessee.

Reliance Industries Ltd. v. Commissioner of Income-tax-Mumbai [2015] 59 taxmann.com 259 (Bombay)

5.0 The High Court of Karnataka has held that where assessee had invested net sale consideration on transfer of long-term asset in construction of a residential house property, deduction of section 54F could not be denied merely because the construction of house was not complete in all respects within 3 years of transfer.

CIT, Bangalore v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74 (Karnataka)

CORPORATE LAW

1.0 Ministry allows filing of 'Unaudited' Accounts of Foreign Subsidiaries

The Ministry of Corporate Affairs (MCA) has relaxed the norms requiring Indian companies with overseas subsidiaries to file 'audited' financial statements of such foreign subsidiaries with the Registrar of Companies (RoC) in India.

After consulting with the Institute of Chartered Accountants of India (ICAI), the Ministry has now clarified that even 'unaudited' financial statements of foreign subsidiaries can be filed with the RoC and will be treated as due compliance of Indian company law.

This dispensation will be allowed in case of a foreign subsidiary which is not required to get its financial statements audited as per legal requirements prevalent in the country of its incorporation, and which does not get its financial statements audited.

2.0 MCA diluted Related Party Norms

The Ministry of Corporate Affairs has steadily diluted its stance on Related Party transactions since mid-2014: It lowered the threshold to pass resolutions to 50 per cent plus from 75 per cent, and prevented only interested parties from voting, while allowing related parties to vote. SEBI has not aligned itself to the new regulations — and rightfully so, in the interest of minority shareholders. Companies act, 2013 needs to align itself to SEBI's Clause 49 requirements for listed companies, and not the other way around.

3.0 Acknowledgement of dues via email deemed as admission of liability

The High Court Of Punjab and Haryana held that where in e-mail respondent-company had acknowledged to pay outstanding dues to petitioner-company but had failed to pay same, respondent was unable to discharge admitted liability and, thus, winding up petition against it was to be admitted.

Venus Petrochemicals (Bombay) (P.) Ltd. v.Vannix Industries (P.) Ltd [2015] 59 taxmann.com 466

4.0 Winding up of defaulting company was maintainable even in absence of exact quantification of overdue sums

High Court Andhra Pradesh and Telangana held that where company had in categorical terms admitted that it was liable to pay debt, a petition for winding up would be maintainable even in absence of precise quantification.

Integra v. Vedavaag systems Ltd.[2015] 58 taxman.com 259

5.0 NBFCs must get RBI nod for acquisition, transfer of control

According to RBI *notification no. RBI/2015-16/122 dt. July 09, 2015*, Non-Banking Finance Companies (NBFCs) will have to give public notice of at least 30 days before effecting the sale or transfer of ownership through sale of shares, or transfer of control with or without sale of shares. Such notice will be given by the NBFC and also by the other party or parties concerned after obtaining permission of Reserve Bank of India (RBI).

- Prior written permission will be required for any takeover or acquisition of control of an NBFC,

Editorial No credit exercise can be risk free and NPAs should not desist the government or financial institutions and banks for expansion of credit

which may or may not result in change of management;

- RBI's permission will be required in case of a change in the shareholding of an NBFC, including progressive increases over time, which will result in acquisition/ transfer of shareholding of 26 per cent or more of the paid-up equity capital of the NBFC.
- Nod not required if shareholding exceeds 26% due to buyback or capital reduction.

6.0 Clarification Regarding Circulation of Financial Statements on short notice

It is clarified that a company holding a general meeting after giving a shorter notice as provided under section 101 of the Companies Act, 2013 may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice

7.0 SARFAESI Act shall prevail in case of conflict between its provisions and provisions of Companies Act, 2013

High Court of Andhra Pradesh and Telangana held that legality and validity of sale of mortgaged property under SARFAESI Act has to be brought for scrutiny before Debts recovery Tribunal; jurisdiction of Company Court is ousted.

Indian Bank v. Sub-Registrar [2015] 59 taxmann.com 276

8.0 Director's age bar to apply only at the time of appointment

The High Court of Bombay has held that Section 196(3) does not operate as an aberration in the appointment of any Director made prior to the coming into force of the 2013 Act, even in a case where the Managing Director crosses the age of 70 years during the term of his appointment. The law also does not interrupt the appointment of a Managing Director appointed after 1st April 2014 where at the date of such appointment or re-appointment the Managing Director was below the age of 70 years but crossed that age during his tenure.

Sridhar Sundararajanv. Ultramarine & Pigments Ltd. [2015] 59 taxmann.com 249 (Bombay)

INDIRECT TAXATION

1.0 Tribunal can't remand case to AO when validity of SCN itself is challenged

The High court held that where assessee has challenged validity of show-cause notice on ground that it was vague and time-barred, Tribunal cannot make an open remand for re-adjudication virtually allowing department to fill up lacunae in notices; Tribunal must adjudicate upon said issues as per Show Cause Notice itself.

Thirumurugan Enterprises v. Customs, Excise & Service Tax Appellate Tribunal [2015] 59 taxmann.com 312

2.0 RMC is Sale

The Supreme Court of India held that preparing Ready Mix Concrete (RMC) and delivering RMC at site and also performing other incidental activities of pouring, pumping and laying of RMC, etc. amounts to 'sale' and therefore, no part of it is liable to service tax.

Commissioner of Service Tax, Delhi v. G.M.K. Concrete Mixing (P.) Ltd. [2015] 59 taxmann.com 286

3.0 Packaging Activity Services

The Supreme Court of India held that since fertilizer cannot be marketed without packaging, packaging of fertiliser is an integral part of manufacture and not taxable under Packaging Services.

Commissioner of Central Excise, Goa v. New Era Handling Agency [2015] 59 taxmann.com 438

4.0 Handling within Factory

The CESTAT, New Delhi Bench held that loading, unloading and shifting of sugar bags within sugar factories would not amount to Cargo Handling Services and would, therefore, not be liable to service tax.

PurshottamLal v. Commissioner of Central Excise, Jallandhar [2015] 59 taxmann.com 229

5.0 Lease of Plant

CESTAT, Mumbai Bench held that leasing of factory with machinery amounts to 'Renting of Immovable property' and not 'Business Support Services'.

Commissioner of Customs & Central Excise, Aurangabad v. Narsinha SSK Ltd.[2015] 59 taxmann.com 186

6.0 Refund of Cenvat credit

Refund of credit cannot be denied on ground that export proceeds have not been realized.

P & P Overseas v. CCE, Delhi-III [2015] 59 taxmann.com 226

7.0 Branded Goods

The High Court of Madras held that where goods were cleared with superscription 'Manufactured and packed by SVS & Sons' on packaging, said use of assessee's own name on goods does not

Editorial

It is important that the lender's lending behaviour must give way to Development Banker's mind set.

make those goods 'Branded'; said goods can be regarded as cleared without any brand name and eligible for exemption accordingly.

Commissioner of Central Excise, Puducherry v. CESTAT, Chennai [2015] 59 taxmann.com 227

8.0 Export Refund of Service Tax

The difference of amount in invoices raised and payments received isn't a ground to deny refund on export of service

Export incentive, viz, refund of accumulated cenvat credit cannot be denied merely due to difference in value of export invoice and proceeds received during a half year, when assessee explained that said differences was in account of time gap in realization and discount allowed.

CST v. Monetization Software (P.)Ltd [2015] 58 Taxmann.com 300(Mumbai-CESTAT)

FEMA

1.0 Foreign investment in India by Foreign Portfolio Investors (FPIs)

It is clarified that the restriction on investments with less than 3 years residual maturity shall not be applicable to investments by FPIs in Security Receipts issued by ARCs.

FDI POLICY AMENDED

The government of India has reviewed the extant FDI policy on various sectors and made the following amendments in the consolidated FDI Policy Circular of 2015, effective from May 12, 2015:

- **Minimum Capitalisation:** Wherever there is a requirement of minimum capitalisation, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalisation requirement.
- **Composite Limit:** Sectoral Cap that is the minimum amount which can be invested by the foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under schedule I (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8(QFI), 8(LLP), 10 (DR) of FEMA (Transfer or Issue of Securities by persons resident outside India) Regulations.
- **FCCBs and DRs:** Foreign Currency Convertible Bonds (FCCBs) and Depository Reciepts (DRs) having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.
- **Portfolio Investment upto 49% :**Portfolio Investment, up to aggregate foreign investment level of 49% or sectoral/ statutory cap, whichever is lower, will not be subject to either government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and/or control of Indian equities form resident Indian citizens to non-resident entities.
- **Sectoral Cap – Overall Limit :**Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/ statutory cap.
- **Onus of FEMA compliance:** The onus of compliance of above provisions will be on the investee company.

  Defence sector: In defence sector, portfolio investment by FPIs, FIIs, NRIs, QFIs and investments by FVCIs, together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investment will be under automatic route.

  Banking sector: In banking private sector where sectoral cap is 74%, FII/ FPI/ QFI investment limits will continue to be within 49% of the total paid up capital of the company.

EDITORIAL

The government needs to reconsider this decision as it may give leverage to many sectors including Retail, unintended.

CAPITAL MARKET

1.0 SC upholds SEBI jurisdiction over GDRs

Market regulator SEBI received a shot in the arm after the Supreme Court on Monday upheld its jurisdiction to regulate the creation and issuance of Global Depository Receipts (GDRs) by companies in the offshore markets

2.0 SEBI to introduce new securitization platform

The appetite for Securitisation in India has been on the lower side; it is used largely to meet priority sector lending targets by banks as investors, NBFCs being the originators. This low appetite can be ascribed to several factors, including legal, taxation and stamp duty issues.

SEBI is working on a new platform for securitization market transactions .Besides, insurance and pension regulators, IRDAI and PFRDA have also been asked to facilitate long-term investments by insurance and pension funds in securitization products.

3.0 SEBI bans suspended Companies and Directors

A suspended company, its holding/subsidiary, its promoters and directors shall not issue prospectus or advertisement soliciting money from public for issue of securities directly or indirectly till suspension is revoked by concerned stock exchange or securities of such company are delisted, Securities and Exchange Board of India said in a circular.

The strict conditions would be in place till the suspension is revoked or till these securities get delisted, whichever is earlier.

In addition, SEBI said the suspended company and the depositories would not be allowed to transfer, by way of sale, pledge, of scrips of a suspended firm held by promoter entities and directors. In case the suspended entities remain listed, then such activities can be done only after three months from the date of revocation of suspension.

4.0 SEBI asks AIFs to give full disclosure on 'Associates'

Alternative Investment Funds (AIFs), having foreign entities as "Associates", are to follow the latest Securities and Exchange Board of India directive to disclose the entire disciplinary history of sponsors, managers, directors, partners, promoters and associates in their placement memorandum.

What are AIFs?

AIFs are funds established or incorporated in India for the purpose of pooling in capital from Indian and foreign investors for investing as per the investment norms prescribed in the AIF Regulations.

5.0 SEBI warns against fraudulent NCD, NPS issues

Making public a list of 193 unlisted companies fraudulently raising money from the public, securities market regulator SEBI warned such firms and other directors of 'stringent actions' and asked investors not to be lured by their schemes.

AUDIT & ACCOUNTANCY

1.0 Toshiba Executives Resign over $1.2-Billion Accounting Scandal

Japanese conglomerate, Toshiba's president Hisao Tanaka and two other executives quit to take responsibility for a $1.2-billion accounting scandal that caused the maker of nuclear reactors and household appliances to restate earnings for more than six years.

FINANCIAL INDICATORS

	Current Rate*	Previos Month	3 Month	6 Month
3 Month LIBOR (%)	0.3116	0.2858	0.2799	0.2584
3 Month MIBOR (%)	7.73	7.99	7.7	8.59
SENSEX	28101.72	27573.66	27507.3	28355.62
NIFTY	8525.6	8328.55	8325.25	8565.55
CRR (%)	4.00	4.00	4.00	4.00
REPO (%)	7.25	7.25	7.5	7.75
REVERSE REPO (%)	6.25	6.25	6.5	6.75
Gold (per 10 gm)	24761	26014	26914	27295
Silver (per kg)	34020	35217	37664	37440
Crude (USD/bbl)	48.74	58.73	59.24	56.46
₹ vs USD	63.759	63.3793	63.8495	62.1888
₹ vs Euro	69.8799	70.4334	71.5114	70.3728
₹ vs 100 Yen	51.22	51.97	53.25	51.98
₹ vs RMB	10.2689	10.2073	10.3321	9.9615
₹ vs Pound	98.7563	97.6548	98.4687	94.4136
MCX Aluminium (per kg)	99	104.70	118.6	114.15
MCX Copper (per kg)	328.1	357.25	408.65	353.5

**As on August 10, 2015* *(Sources: MoneyControl, NSE, BSE, RBI, MCX)*

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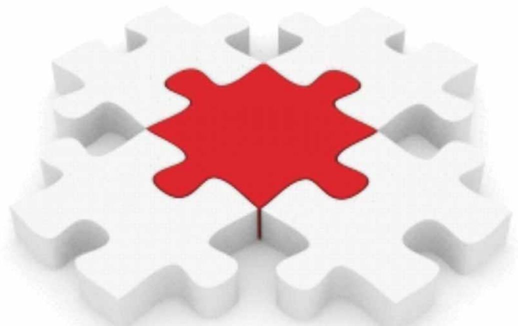

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