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## EDITORIAL

### CA ELECTION- CAST YOUR VOTE CAREFULLY

*in view of challenges before CA profession*



CA Vinod Jain\*

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

The election to the Council of the Institute of the Chartered Accountants of India- Central Council and Regional Councils has been notified and are scheduled on December 3, 2015 and Dec 4, 2015. These elections are very important for Chartered Accountants Community as a whole including members in practice, members in employment as well as members in Industry/ Businesses. **The Chartered Accountants will decide their own future by**

**carefully casting their vote in view of mounting challenges in front of profession of Chartered Accountants:**

- **Credibility:** The credibility of Chartered Accountants is being questioned with ulterior motives, referring to some exceptional cases.
- **Employability:** The opportunities for young Chartered Accountants for employment need substantial expansion and growth. The initial salary levels for Chartered Accountants were at a minimum of ₹50,000 per month about seven years ago with salaries ranging upto ₹ 40 lakh per annum. How we can bring similar recognition and demand for Chartered Accountants is a very crucial challenge.
- **Senior Chartered Accountants** are facing a similar challenge of employability and adequate compensation comparable to their counterparts in other professions. Career options are limited.
- **Bank Audits:** The members of bank branches subject to annual audits have been reduced by about 80% in recent past, at the instance of Reserve Bank of India and Indian Banks' Association. Absence of centralised appointment is adversely impacting small and medium practitioners and especially those who are not well connected in spite of being highly capable.
- **Allotment from Panel:** The number of allotments from various panels has reduced significantly. No significant

additional panel has been added during the last 5 Years in spite of large need of MNREGA, Governmental Departments, Panchayats, Local Bodies, World Bank Assignments, Forensic Audits, CBI Panel Railways, Electricity board and Insurance company being the potential opportunity.

- **Tenders:** The tendering system by Government, Public Sector Units and a large number of other institution have brought in ridiculously low level of fee with negative value addition, adversely impacting quality and respect of the profession.
- **Competence:** The education and training system needs a deep visionary overhaul. The practical training needs to be connected to the examination and marks. ICAI needs to provide high quality cost effective education to all the students. The current dependency on private coaching classes has derailed the directions and quality, in the absence of active guidance and hand holding at the level of the institute.

The capability of the Central Council and Regional Council to address challenges and visionary planning depends on very careful selection of Regional Council Members as well as Central Council Members besides Branch Officials.

- **Examination:** The examination levels have significantly improved recently. The practical aspects of the profession need to be linked to the examination to make it more effective. The current expectations of the businesses and society have to be built in the examination system.

**HOW TO ELECT:** The Central Council of the Institute, particularly **few of the members** among the council have contributed very significantly to visionary growth and address some of the challenges.

The members may consider following:-

- It is very **important to vote** even if you are busy. Travel Plans, professional meetings and various personal engagements need to be planned with a commitment to definitely vote.

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**LATEST IN FINANCE****1.0 Cabinet relaxes exit norms for Private Infra Players**

The Union Government has given its nod to full equity divestment after two years of completion of construction of all Build-Operate-Transfer (BOT) projects. The divestment will now be allowed irrespective of the year the project was awarded. This approval will allow concessionaires or promoters to use the proceeds from the sale of divested equity in any other highway or power sector projects. The proceeds can also be utilised in incomplete National Highways Authority of India (NHAI) projects. They can also retire their debt to financial institutions in any other infrastructure projects.

**2.0 Govt to build General Network Access for hassle-free power**

The government would set up a General Network Access (GNA), a common mesh of transmission network, to realise its ambitious '20-year perspective plan on transmission'.

**3.0 RBI panel for conversion of UCBs into regular banks**

To overhaul and strengthen the Urban Cooperative Bank (UCB) structure, an internal committee of the Reserve Bank of India (RBI) has recommended that UCBs with business size more than ₹20,000 crore be allowed to convert into Universal Commercial Banks while those with a lower size be converted to small finance banks.

**<< ECONOMIC UPDATE >>**

- NBFCs can no longer lend more than 50 per cent of the value of shares pledged.
- Mumbai-based IRB Infrastructure Developers has announced that it intends to form an Infrastructure Investment Trust (InvIT) under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, for which it plans to increase its borrowing limit by ₹16,000 crore.
- The government will not permit the transfer of mining leases that were not sold in auctions.
- Hotels in the Capital will now be allowed to build service apartments in the properties.

**HOUSING REFORMS**

Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Jammu & Kashmir, Jharkhand, Kerala, Madhya Pradesh, Manipur, Mizoram, Nagaland, Odisha, Rajasthan, Telangana and Uttarakhand have agreed to implement six mandatory reforms

- The States have agreed to do away with the requirement of separate Non-Agricultural Permission (NAP) in case land falls in the residential zone earmarked in the Master Plan of city or town (No change of land use required).
- Prepare or amend Master Plans earmarking land for affordable housing
- Put in place a single-window-time bound clearance system for layout approvals and building permissions.
- States have also agreed to do away with approvals below certain built-up area/ plot size in respect of Economically Weaker Sections and Low Income Groups
- Legislate or amend existing rent laws on the lines of the Model Tenancy Act.
- Provide additional Floor Area Ratio/Floor Space Index/Transferable Development Rights (TDR) and relax density norms for slum redevelopment and low-cost housing.

Under this Urban Housing Mission, the Central government will provide assistance of about ₹1 lakh to ₹2.30 lakh per house under different components of the scheme.

**4.0 AIIB - Infra funding major**

The newly-created Asian Infrastructure Investment Bank (AIIB) steps up efforts to tap newer avenues for infrastructure development.

On June 29, 50 countries, including India, signed an agreement to set up the \$100-billion new regional development bank, modeled on the lines of the Asian Development Bank (ADB), at Beijing. India is the second largest shareholder with 8.52% in AIIB.

AIIB would enable India to access new resources for financing of national and cross-border infrastructure projects.

**5.0 Govt puts off plans to privatise four airports**

The government has decided to scrap the proposal to privatise Chennai, Kolkata, Jaipur, and Ahmedabad airports. Now, private players would be roped in only for operation and maintenance activities of Jaipur and Ahmedabad airports.



EDITORIAL

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## CA ELECTION...

- ' **To select the right candidate** ' the following important aspects may be considered:-
  - **Past Performance**- Please ask for specific contributions not positions alone
  - Concrete **vision and commitments** on specific challenges and issues
  - Professional **Competence and Experience**- Professional Exposure and understanding of key professional issues is a must
  - Academic Performance
  - Personal Integrity, commitment to ethics and credibility

We need to emphasis on the fulfillment of the objectives of the Institute i.e. the core competence vis-a-vis the competency and the dedication of elected members to achieve the same. The glory of the Institute can be restored by visionary contribution by membership at large, not a chosen few. The direction needs to be independent. The mess created in the past needs to be looked into. The elected members should be sufficiently experienced and mature, who work with total dedication and independent of any influence. It is important that personal relationships and professional commitments do not over impact the decision. **OUR FUTURE IS CRUCIAL WE NEED TO DECIDE DILIGENTLY**

### 6.0 Govt launches Education Loan Portals

The government has launched 'Vidya Lakshmi', a web-based portal for students seeking educational loans.

The portal provides a single window for students to access information and make applications for loans provided by banks as well as government scholarships.

### 7.0 11 entities get payments bank licences

The Reserve Bank of India gave 'in-principle' approval for 11 entities including • Reliance Industries • Aditya Birla Nuvo • Paytm • Vodafone • Airtel • Department of Posts • Cholamandalam Distribution Services • Tech Mahindra • National Securities Depository Limited (NSDL) • Fino Pay Tech and • Sun Pharma's Dilip Shantilal Shanghvi.

## EQUITY RESEARCH

### Step-by-step Approach to Industry

1. Study statistical relationships between industry trends and a range of economic and business variables
2. Develop practical, reliable industry forecasts by using various approaches to forecasting
3. Check the chosen industry's past trends, demand-supply mechanics and future outlook
4. Examine industry performance
  - a) In relation to other industries to identify industries with superior/inferior returns and
  - b) Over time to determine the degree of consistency, stability, and risk in the returns in the industry
5. The objective of this analysis is to identify industries that offer the highest potential for investment returns on a risk-adjusted basis. The investment time horizon can be either long or short
6. Take up an industry and find out the sectors. Select the particular sector that is doing well and its prospects are good. Moreover, it is worthwhile to look at the different market segments in a particular sector

### 8.0 ₹2000 crore for startups

Government has launched the India Aspiration Fund (IAF) to be set up as a fund of funds under the Small Industries Development Bank of India (SIDBI) in order to boost the startup ecosystem in the country. An initial corpus of ₹400 crore has been already allocated to various venture funds under it.

### 9.0 Ease of Formation of Company

For ease of doing business, Ministry of Corporate Affairs has introduced a simplified Incorporation Form-INC-29. With this integrated single form, a company can be registered in India, get allotment of Director Identification Number, name availability, incorporation of company and commencement of business. This form can also generate PAN and TAN.

### Common Seal

Further, the **mandatory requirement of having a common seal has also been done away with the amendment in the Act vide Companies (Amendment) Act 2015 applicable from 29th May 2015**. If required, the companies can amend the Articles of Association to do away with a common seal.



## CORPORATE LAWS

### Digital AGMs

#### How E-voting works?

According to the rules, e-voting shall be open for a minimum of one day and a maximum of three days. This provides enough time for a shareholder to vote. The Rules are flexible enough to permit a person who has e-voted to attend the AGM and are rigid enough to prevent him from altering his vote at the AGM. The purpose of e voting is to ensure that a larger number of members get to participate in the affairs of the company.

#### 1.0 Local Law Mandatory

The Bombay High Court has clarified that two Indian parties putting the clauses of foreign law is against public policy.

The High Court's ruling, however, is silent on whether companies can choose a foreign location for arbitration but apply Indian law.

## DIRECT TAXATION

#### 1.0 Alternative Investment Funds-Taxation

For Category I and II AIFs, National Investment and Infrastructure Fund (NIIF) would be eligible for a pass-through status under the Income Tax Act. In the case of Category III AIF, where pass-through status is not available, all income received by NIIF shall be taxable at its level and any distribution made to the investors would be tax exempt.

#### 2.0 CBDT issue guidance notes on FATCA implementation

The provisions of Foreign Account Tax Compliance Act (FATCA) essentially provide for 30 per cent withholding tax on US source payments made to Foreign Financial Institutions (FIs) unless they enter into agreement with IRS to provide information about accounts held with them by USA persons or entities controlled by USA persons.

#### 3.0 Section 54F – Requirement met by Investment – Completion not mandatory

The High Court of Karnataka where assessee sold a property on 6-10-2008 and purchased another residential plot on 13-10-2008 and commenced construction, which was not completed within three years, and she claimed benefit of section 54F, once it was established by assessee that she

had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of section 54F and she would be entitled to get benefit of section 54F

*Commissioner of Income-tax, Bangalore v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74*

#### 4.0 No TDS on provision for Dismantling and Restoration of site

The ITAT Chennai Bench held that while making provision for dismantling signal towers and restoration of site after termination of lease period, a telecom operator was not required to deduct tax at source.

*Dishnet Wireless Ltd. v. Deputy CIT TDS Circle-1, Chennai\* [2015] 60 taxmann.com 329 (Chennai - Trib.)*

#### 5.0 Abnormal Cost – to exclude from Transfer pricing

The ITAT Delhi Bench held that in course of transfer pricing proceedings, while computing operating cost, abnormal costs incurred on account of start up of business like salary, rent and depreciation etc. have to be excluded.

*HCL Technologies BPO Services Ltd. v. Assistant Commissioner of Income-tax, CC-2, New Delhi [2015] 60 taxmann.com 186*

#### 6.0 Notional Interest- Part of Transfer Pricing

The ITAT Mumbai Bench held that where assessee received certain amount from AE for rendering EPC services beyond normal period of 60 days, notional interest had to be worked out by applying LIBOR interest rate for computing transfer pricing adjustment

*Tecnimont ICB House v. Deputy Commissioner of Income-tax - 9 (3), Mumbai [2015] 60 taxmann.com 143*

## CAPITAL MARKET

#### 1.0 Promoters to disclose reasons for pledging shares

Capital Markets Regulator Securities and Exchange Board of India (SEBI) has directed promoters of companies to give reasons for pledging their shares when they disclose creation of a pledge/ encumbrance to stock exchanges.

#### 2.0 ESOPs out of Insider Trading regulations

In a decision that will come as a big relief for India Inc, SEBI said that buying and selling shares as part of Employee Stock Option Programme (ESOP) will not be covered under the Insider



Trading regulations. However, companies are required to comply with disclosure norms as applicable under the regulations.

### 3.0 SEBI for exemption from open offer in forfeiture of shares

Securities and Exchange Board of India has proposed exemption from making an open offer for entities whose shareholding in a listed company increases due to forfeiture of shares.

### 4.0 BSE plans to delist 1,000 companies

Tightening the noose on individuals and enterprises misusing its platform, stock exchange BSE plans to delist over 1,000 companies.

### 5.0 SEBI notifies 'fast-track' route for share sales

To boost fund raising from markets, SEBI notified new norms which will provide all listed companies a 'fast-track' route for share sales. As per the new norms, firms in which public shareholders own stocks worth ₹1,000 crore will now be able to access this route through a Follow-on Public Offer (FPO).

Such listed companies can tap the 'fast-track' route even without complying to this minimum average market value limit, provided they meet other conditions. Under the 'fast-track' route, a listed company would not be required to file any draft offer document for its FPO or rights issue. This new route would also give a boost to the government's disinvestment drive.

### 6.0 SEBI paves way for FMC merger

SEBI paved the way for the merger of the markets regulator with the Forward Markets Commission (FMC) before the end of September, 2015. According to a press release issued by SEBI, its board has cleared the norms for commodity exchanges and brokers

### 7.0 More anchor investors allowed for IPOs above ₹ 250 crores

The SEBI board relaxed the restrictions on the maximum number of anchor investors (currently 25) in public issues worth over 250 crore. While the requirement of the number of anchor investors for allocation of up to 250 crore remains the same, in case of allocations beyond 250 crore, there can be 10 additional investors for every additional allocation of 250 crore, subject to a minimum allotment of 5 crore an anchor investor. Shares allotted through anchor investors will have a lock-in period of 30 days from the date of allotment in the public issue

An anchor investor refers to a qualified institutional buyer (QIB) who makes an application for a value of 10 crore or more through the book-building process.

### 8.0 SEBI gives start-ups shot in the arm

- Start-ups can now get listed on a separate institutional trading platform of the stock exchanges, such as BSE and NSE
- The new platform would be open to only institutional investors and HNIs
- SEBI has also relaxed the mandatory lock-in period for promoters and other pre listing investors to six months.
- At least 25% of their pre-issue capital would need to be with institutional investors for technology start-ups, while this requirement would be 50% for companies from other areas.
- Institutional investors, along with family trusts, systematically important NBFCs and intermediaries registered with SEBI- with minimum Net Worth of ₹500 Crore- would be allowed to assess the Institutional Trading Platform.
- The entity would have to list its securities on the recognised stock exchange within 30 days of getting approval from SEBI.
- Provisions relating to minimum public shareholding would not be applicable to entities listed on Institutional Trading Platform without making a public issue.

### 9.0 Wealthy Investors under SEBI Scanner

#### Past

#### • Penny Stocks

Orders related to around 10 companies; 36 companies and 900 entities banned, estimated Revenue loss ₹20,000 crore.

#### • SME Manipulation

Passed order against four companies that raised ₹46.53 Crore through their public offerings of which ₹30.06 Crore, or 64.60% of Total IPO proceeds, were transferred back to all the entities.

#### Latest

- 50 High Net Worth Individuals on radar for tax evasion; estimated loss worth ₹7-8,000 Crore
- Investors under the option segment to trade in illiquid stocks



- SEBI to pass order against these HNIs, a reference to be made to the Enforcement Directorate, Financial Intelligence Unit and Income Tax Department.
- SEBI to impose heavy fine from ₹5 Lakh to upto Rs. ₹Crore on all beneficiaries of manipulated capital liaisons.

### 10.0 Takeover Code exempted for Institution Platform

Substantial Takeover Regulations shall not apply to direct and indirect acquisition of shares or voting rights in or control over a company listed without making a public issue, on the institutional trading platform of a recognised stock exchange.

Takeover Code Disclosure formats have been amended for all companies.

Source: N/N SEBI/LAD-NRO/GN/2015-16/009 dated 14/08/201

## INDIRECT TAXATION

### 1.0 MF Agents- No Service Tax Levy

Mutual Fund Agents and distributors have cause for cheer as the Central Board of Excise and Customs has made it clear they need not fork out service tax on services provided by them.

### 2.0 SC stays HC order upholding tax on legal services to firms

The Supreme Court stayed the Bombay High Court's judgment that upheld the levy of service tax on services provided by lawyers and law firms to business clients with turnover of ₹10 lakh and more.

### 3.0 No Service Tax on food sold by way of Pick-up or Home deliveries

It is clarified that in case of the transaction involving Pick-up or the Home Deliveries of the food sold by the Restaurant, the dominant nature of the transaction is that of sale and not service.

The above transaction is not liable to Service Tax, being sale in nature, only if, no amount is charged for such free delivery of food.

Letter c.no.st-20/std/misc./sevottam/62/12/4693, dated 13-8-2015

### 4.0 Credit can't be denied on capital goods if depreciation claim on duty element is reversed in revised ITR

The High Court of Bombay held that where depreciation was originally claimed on 'duty paid on capital goods', but, later revised return was filed reversing said depreciation claim and accepted by Income-tax authorities, same

amounted to compliance with rule 4(4) of CENVAT Credit Rules, 2004 and hence, credit could not be denied.

*Commissioner of Central Excise & Customs, Aurangabad v. TernaSethkariSahakariSakharKarkhana Ltd. [2015] 60 taxmann.com 174*

### 5.0 Damages deducted by service recipients from amount payable to service providers will form part of taxable value

The CESTAT, Mumbai Bench held that deductions made by service recipient from amount payable to service providers towards damages payable by service providers for damages caused to properties of service recipients, will form part of value of taxable value.

*Gupta Global Resource (P.) Ltd. v. Commissioner of Customs & Central Excise, Nagpur [2015] 60 taxmann.com 118*

### 6.0 Service-tax couldn't be demanded under reverse charge if it was otherwise allowable as credit or refund

The CESTAT, Chennai Bench held that if service tax, if any, payable under reverse charge was otherwise allowable as CENVAT Credit or refund, said service tax cannot be demanded, as entire exercise is revenue-neutral.

*Texyard International v. Commissioner of Central Excise, Trichy [2015] 60 taxmann.com 394*

### 7.0 Using Director's surname on goods doesn't amount to using other's brand name; SSI exemption available

The Supreme Court of India held that use of director's surname on excisable goods cannot amount to use of other's brand name by assessee-company; hence, SSI-exemption cannot be denied to assessee.

*CCE., Pune-II v. Pethe Brake Motors (P.) Ltd. [2015] 60 taxmann.com 294*

### 8.0 Un-availed cash discount is deductible if it is known prior to clearance of goods

The Supreme Court of India held that Cash discount "known" at or prior to clearance of goods, being contained in agreement of sale, is to be deducted from sale price in order to arrive at value of excisable goods "at time of removal", even if not actually availed

*Purolator India Ltd. v. CCE, Delhi-III [2015] 60 taxmann.com 471*

### 9.0 Time-limit to file refund claim isn't applicable to refund of tax paid at insistence of dept.

The CESTAT, Mumbai Bench held that where tax has been paid at insistence of department



without any adjudication/assessment order, refund of said tax would not be governed by time-limit of section 11B.

*C.K.P. Mandal v. Commissioner of Service Tax, Mumbai-II [2015] 59 taxmann.com 306*

### 10.0 Damages deducted by service recipients from amount payable to service providers will form part of taxable value

The CESTAT, Mumbai Bench held that deductions made by service recipient from amount payable to service providers towards damages payable by service providers for damages caused to properties of service recipients, will form part of value of taxable value.

*Gupta Global Resource (P.) Ltd. v. Commissioner of Customs & Central Excise, Nagpur [2015] 60 taxmann.com 118*

### 11.0 Secondment of staff to India from foreign holding Co. didn't amount to 'manpower supply services'

The CESTAT, New Delhi Bench held that secondment/expatriation of staff from foreign holding company to assessee, being Indian subsidiary, to work as 'employee' of assessee would not amount to 'manpower supply services'.

*Samsung India Electronics (P.) Ltd. v. Commissioner of Central Excise and Service Tax [2015] 59 taxmann.com 444*

### 12.0 Shortage and excess of input materials due to accounting errors didn't warrant reversal of credit

The Supreme Court of India held that where there was shortage as well as excess of inputs due to errors in complex accounting system of assessee and excesses of inputs were higher than alleged shortages, department could not seek reversal of credit only on shortages.

*Commissioner of Central Excise v. Maruti Suzuki India Ltd. [2015] 60 taxmann.com 377*

### 13.0 Vocational Training

CESTAT, Mumbai Bench held that courses in field of Information Technology, Marketing, Personnel Management, Human Resources Development, etc are not eligible for exemption in respect of 'Vocation Training'.

*Balaji Society v. Commissioner of Central Excise, Pune-III [2015] 59 taxmann.com 20*

## ACCOUNTING

### 1.0 Railways shift to Accrual accounting in Ajmer

A pilot project to convert to accrual (commercial) accounting from the current cash flow method has chugged off in its Ajmer division. Commercial accounting will present a clearer picture of railway books, which could lead to more investment from private sector and multilateral agencies.

## INSURANCE

### 1.0 IRDAI to allow insurers to invest in GILT-ETF

Insurance Regulatory and Development Authority of India has said that Exchange Traded Funds with G-sec Underlying will be part of 'approved investments' for insurers. The regulator said that these should be issued and managed by mutual funds registered under SEBI (Mutual Funds) Regulations.

### 2.0 Corporate Agents, Banks can tie up with multiple insurers

Insurance Regulatory and Development Authority of India has decided that corporate agents (including banks) can tie up with upto three life, non-life and health insurers each for the distribution of insurance products. However, this will not be made mandatory.

## FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month	6 Month
3 Month LIBOR (%)	0.3330	0.3116	0.2808	0.2677
3 Month MIBOR (%)	7.77	7.73	8.09	8.38
SENSEX	25622.17	28101.72	27730.21	28709.87
NIFTY	7788.10	8525.60	8353.10	8712.05
CRR (%)	4.00	4.00	4.00	4.00
REPO (%)	7.25	7.25	7.25	7.50
REVERSE REPO (%)	6.25	6.25	6.25	6.50
Gold (per 10 gm)	25952	24761	26716	25933
Silver (per kg)	34910	34020	36502	35610
Crude (USD/bbl)	48.89	48.74	63.2	49.93
₹ vs USD	63.759	63.3793	63.8495	62.1888
₹ vs Euro	74.7139	69.8799	72.3186	67.6577
₹ vs 100 Yen	55.14	51.22	51.73	51.47
₹ vs RMB	10.4082	10.2689	10.234	10.0358
₹ vs Pound	102.293	98.7563	100.9361	94.549
MCX Aluminium (per kg)	107	99	105.15	109.7
MCX Copper (per kg)	356.1	328.1	361.45	368.65

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

**EDITORIAL-2**

**INCOME TAX RETURNS- EXTENSION OF DATE**

The issue of the last date filing of Income Tax Return this year is troubling the entire business community and more particularly the profession of Chartered Accountants. In view of the following important issues this year:-

- Due to comprehensive changes in ITR, the last date of filing Income Tax Return (ITR) for individuals and small tax payer was extended from July 31 to September 7.
- The Companies Act **New disclosure requirements** in Balance Sheet have increased multi fold and this is the first year for such additional requirements.
- In all earlier years, at least **two clear months** have been available to file ITRs of corporate and all large assesses including those for which tax audit is

mandatory. In the current year only 23 days are available.

- Large number of notifications including exemptions applicable to corporate sector has been issued by Ministry of Corporate Affairs (**MCA**) in last three months directly impacting finalisation of accounts and disclosure.
- There have been a lot of other factors like adverse weather conditions, political disturbance/election etc. which have effected the working of business and industry adversely.

Government of India needs to definitely consider the extending the date of filing of returns at least upto October 31, 2015.

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