



ESTD. - 1989

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For Chartered Accountants: Rs 150/- (Single Copy Rs 15/-)	For Others: Rs 200/- (Single Copy Rs 20/-)	For CA Students: Rs 100/- (Single Copy Rs 10/-)
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## EDITORIAL

### ICAI Elections -Your Vote will make the Difference



CA Vinod Jain\*

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

The most crucial time for the profession of CAs i.e. 3 yearly elections of the Institute are scheduled for December 4-5, 2015. How we exercise our vote will decide future of each one of us. The role being played by the Elected Central Council & the Regional Council is very crucial and it is important to understand while voting that We need a leadership which takes the profession in a right Direction, new and larger professional opportunities are

harnessed nationally as well as internationally, we meet various challenges as a profession and all members are effectively, efficiently and respectfully deliver professional services and add a highly acclaimed value to the corporate, while being in employment.

#### Backdrop

The scenario in the society, economy, Industries, service sector, international and domestic investment, technology and regulatory frame work is changing very fast including:

- Companies Act, 2013 and the rules hereunder have recently given us a flavour of new challenges and opportunities
- International Financial Reporting Standards (IFRS) phase 1 will be implemented in the current year ending March 31, 2016.
- The Goods & Services tax (GST) is likely to be implemented very shortly, draft rules have started pouring in.
- The Income Tax Act is being comprehensively modified by a Finance Minister appointed High Powered Committee
- The Economic growth is entering the phase of steep growth momentum in next few months
- Foreign Direct Investment (FDI) has recently crossed highest record levels.

#### Need of the Hour

In the above backdrop, the CA profession will have to play a very crucial role not only in implementation of the new laws but also in giving shape to new projects, implement new regulations, establish controls, arrange resources and to provide a strong footing for sustained growth of business in India.

*Creditability and glory of the profession is being tarnished by ulterior motives. A strategic move is important to address this.*

#### Role of Central Council

The Central Council is the top most policy making governing body of the Institute which takes crucial decision, actions and initiatives in respect of:

- Education, training and examination of students
- Development of specialised skills and capacity building among members
- Rejuvenation of senior members in the current framework and update them comprehensively.
- Setting up of Accounting Standards and Auditing standards
- To monitor quality of professional services and prosecute erring members under its disciplinary mechanism.
- Auditing is core area of the profession for which it is recognised and the goodwill of the institute and members per se is directly attached to our performance as auditors.
- To negotiate international relationships with the Institutes in various countries and International Federation of Accountants (IFAC), International Auditing Standard Board (IASB), International Accounting Standards Board (IASB) Confederation of Asian Pacific Accountants (CAPA), South Asian Federation of Accountants (SAFA), etc.

*Ability to understand, appreciate, plan and respond to various issues and challenges is very crucial.*

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**LATEST IN FINANCE****1.0 Jan Dhan Bank Accounts gain currency with ₹ 400 crore daily transactions**

The transaction volumes have been significant, as indicated by the RuPay debit cards linked to the accounts. The daily transactions have crossed ₹ 20 lakh as indicated by the card usage with the average transaction size being 2,000 totalling to ₹ 400 Crore per day.

**2.0 Government opens door for Private Airport Developers**

In a major boost to private airport developers, the Union Government will continue to encourage airport development through the Public- Private Partnership (PPP) Model. Airports Authority of India (AAI) will closely monitor the cost of airports built through the PPP route.

**3.0 NHAI to bridge Road Projects Funding Gap**

The Cabinet Committee of Economic Affairs (CCEA) decided to extend a one-time dispensation for funds infusion by NHAI into such under-construction build, operate and transfer or (toll) highway projects announced earlier to stranded BOT (annuity) projects also.

National Authority of India loan will carry an interest of 9.75% (bank rate plus 2%). NHAI will have the first charge on the receivables (toll/annuity) once these projects are completed.

**4.0 World Bank maintains 7.5% GDP growth in FY16**

The World Bank has maintained its growth forecast for India at 7.5 per cent for 2015-16, but marginally lowered the projections for 2016-17 and 2017-18 to 7.8 per cent and 7.9 per cent, respectively.

**5.0 Non Residents given access to National Pension Scheme**

The Reserve Bank of India allowed Non Resident Indians to subscribe to the national pension scheme, governed and administered by the Pension Fund Regulatory and Development Authority, in a move which will allow non-residents access to old-age income security.

**6.0 Exempted PFs told to pay for investment blunders**

Employees' Provident Fund Organisation has warned exempted provident funds that losses

arising out of wrong investment decisions have to be compensated by the management.

**7.0 Food Ministry for Production Linked Subsidy to sugarcane farmers**

For holistic development of the sugar sector, the Food Ministry has proposed direct payment of ₹47.50 per quintal to growers out of total cane price of ₹ 230 per quintal as production subsidy for 2015-16 seasons.

**8.0 Foreign Ancillary Firms Plan in defence sector- a new opportunity**

Many foreign ancillary firms that supply defence components to big manufacturers are moving to set up base in the country, eyeing the thousands of crores of opportunity that is set to open soon with government raising foreign investment limit for the sector and finalising an offset policy.

**9.0 Major incentive in Export from India Scheme**

The Commerce Ministry has expanded the ambit of its Merchandise Exports from India Scheme (MEIS) to boost export of key products such as textiles, telecom and electronic items.

Under the MEIS, the government provides exporters duty credit scrip at 2%, 3% and 5% of their export turnover, depending upon the product and the country, as envisaged in the foreign trade policy 2015-20. The scrip can be transferred or used for payment of a number of duties, including the basic customs duty.

Exports which used to get duty benefits only for a few countries—would be entitled to global support. Similarly, higher support has been granted to certain categories of products, manufactured by MSMEs.

**10.0 Patent rule changes on anvil**

The Indian Patent Amendments (Amendment Rules), 2015 released by the Department of Industrial Policy and Promotion (DIPP) seeks to fast-track the patent application and processing procedure, and clarifies the manner in which certain information and supporting drawings are to be furnished. Stake holders have 30 days to give their feed back. The rules, however, do not touch substantive parts of the law — the demands from pharma MNCs for the removal of Section 3(d), the extra filter for patentability, have not been met. While some quarters allege that Section



EDITORIAL

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### ICAI elections -Your Vote will make the Difference

- **Professional development-new opportunities, managing competition and most importantly ensuring that the image of the profession and respect for the professionals gains strength.**
- To represent the profession on various key decision making committees of SEBI, Ministry of Corporate Affairs, Central Board of Direct Taxes, Central Board of Excise & Customs
- To represent on International Forums like World bank, Securities Exchange Commission, multilateral and bilateral agencies and foreign GovernmentThe Regional Councils play a very important role

**Vision and a focused approach is a must for playing a meaning full role with the Government and international bodies.**

#### Role of Regional Council

- In continuing education of members by organising professional update programs on contemporary topics in a practical manner-  
**Quality of elected leaders will decide quality of the profession**
- Dealing with Registrar of Companies- identifying issues, providing practical solutions, taking up system related issues and guiding members to solve them.
- In case of Taxation, there are large numbers of issues bringing harassment as well as system related issues- the Regional Council needs to take regular action on all such professional issues.
- To understand day to day problems of the Chartered Accountants profession in practise and in industry and to play hand holding role, organising practical workshops, providing professional updates in atimely, purpose-full and

3(d) is a TRIPS-plus provision, India has long maintained that it is meant to prevent 'evergreening' of patents by way of incremental changes sans therapeutic value, and is fully in conformity with the Trade Related Aspects of Intellectual Property Rights (TRIPS) .

in depth manner, explaining implications of the new developments.

- A practical outlook and deep understanding of all the subject related issues is amust in our Regional Council Representatives.
- Just sending e-mail updates as a candidate seeking election may not be enough. High Quality updates coming from some of the potential candidates are needed to be institutionalised through Regional Council and Central Council.**
- A regular active interaction between Institute and members will add great value to meet expectations of members as well as users of our services and stakeholders.

#### How will you choose?

- It is important to elect highly competent and seasoned professionals for Central Council. It is important to examine their commitment, past contributions, level of understanding and capabilities of facing severe challenges. Technical knowledge, presentation skill and ability to take up issues strongly are a must.
  - The regional council candidates should be a mix of young and experienced, should have the professional capabilities, ability and commitment to give time
  - Understanding deep minute details of practical professional issues both for members in industry as well as members in practise is most important
- The learned Chartered Accountants can-not vote based on personal connection, parties,and get together or other extraneous factors as the correct selection shall directly benefit your own future. Let us all meet the candidates, have free and frank discussions, understand their capabilities and commitments and also study carefully their credentials, their academic record **and most importantly to check their confidential reference while undertaking due diligence.**

Expedited examination is also available when the applicant or his assignee or prospective manufacturerhas already started manufacturing of the invention in India, or has undertaken that the manufacturing shall commence within 2 years from the grant of patent.



## Review of Foreign Direct Investment (FDI) policy on various sectors

### 1. Construction Development sector

Following changes have been made in the FDI policy on Construction Development sector:

- Conditions of area restriction of floor area in construction development projects and minimum capitalization have been removed.
- Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy.
- A foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed.
- Further, transfer of stake from one non-resident to another non resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.
- Nonetheless, exit is permitted at any time if project or trunk infrastructure is completed before the lock-in period.
- FDI is not permitted in an entity which is engaged or proposes to engage in real estate business.
- Condition of lock-in period will not apply to Hotels & Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs
- 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.
- Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.
- “Transfer”, in relation to FDI policy on the sector, includes,—
  - (a) the sale, exchange or relinquishment of the asset ; or
  - (b) the extinguishment of any rights therein ; or
  - (c) the compulsory acquisition thereof under any law ; or

(d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(e) any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

### 2. Defence Sector

The following changes have inter-alia been brought in the FDI policy on this sector:

- Foreign investment up to 49% will be under automatic route.
- Portfolio investment and investment by FVCIs will be allowed up to permitted automatic route level of 49%.
- Proposals for foreign investment in excess of 49% will be considered by Foreign Investment Promotion Board (FIPB).
- In case of infusion of fresh foreign investment within the permitted automatic route level, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, Government approval will be required.

### 3. Broadcasting Sector

Sector/ Activity	New Cap and Route
Terrestrial Broadcasting FM (FM Radio),	49% Government Route
Up-linking of ‘News & Government route Current Affairs’ TV Channels	
Up-linking of Non-‘News & Current Affairs’ TV Channels	100% Automatic Route
Down-linking of TV Channels	

### 4. Special Dispensation for NRIs

Non-Resident Indians (NRIs) have special dispensation for investment in construction development and civil aviation sector. Further, investment made by Non-Resident Indians under schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations is deemed to be domestic investment at par with the investment made by residents.





The special dispensation of NRIs has now been also extended to companies, trusts and partnership firms, which are incorporated outside India and are owned and controlled by NRIs. Henceforth, such entities owned and controlled by NRIs will be treated at par with NRIs for investment in India.

#### 5. Banking Sector

Government has decided to introduce full fungibility of foreign investment in Banking- Private sector. Accordingly, FIIs/FPIs/QFIs, following due procedure, can now invest up to sectoral limit of 74%, provided that there is no change of control and management of the investee company.

#### 6. Plantation Sector

In addition to tea plantation, other plantation activities namely; coffee, rubber, cardamom, palm oil tree and olive oil tree plantations also for 100% foreign investment. Foreign investment in the plantation sector would henceforth be under automatic route.

#### 7. Manufacturers- E-commerce without Government Approval

It has been decided that a manufacturer will be permitted to sell its product through wholesale and/or retail, including through e-commerce without Government approval.

#### 8. SINGLE BRAND RETAIL TRADING

##### 8.1 High Tech Retail- Single Brand

To provide opportunity to such single brand entities, it has been decided that in case of 'state-of-art' and 'cutting edge technology' sourcing norms can be relaxed subject to Government approval.

##### 8.2 E-commerce Single Brand

It has been decided that an entity which has been granted permission to undertake Single Brand Retail Trading will be permitted to undertake e-commerce activities.

##### 8.3 Indian Brands

It has been clarified that Indian brands are equally eligible for undertaking SBRT. It has been decided that certain conditions of the FDI policy on the sector namely; products to be sold under the same brand internationally and investment by non-resident entity/entities as the brand owner or under legally tenable agreement with the brand owner, will not be made applicable in case of FDI in Indian brands.

#### 8.4 Indian Brand- Manufacturer- FDI- Single Brand

An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. For the purposes of FDI Policy Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from other Indian manufacturers.

#### 8.5 Duty Free Shops

100% FDI is now permitted under automatic route in Duty Free Shops located and operated in the Customs bonded areas.

#### 9.0 Same entity to carry out both wholesale and single brand retail trading

"Same entity to carry out both wholesale and single brand retail trading" has been permitted subject to FDI compliance in each case.

#### 10. FDI in LLPs

FDI policy on Limited Liability Partnerships (LLP) has been amended to provide that investments in LLPs will not require Government approval. 100% FDI is now permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions. Further, the terms 'ownership and 'control' with reference to LLPs have also been defined.

#### 11. Downstream Investment by LLPs

It has been decided that in line with companies, an LLP having foreign investment will be permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Further, for the purposes of FDI policy, the term 'internal accruals' has also been defined.

#### 12. The Regional Air Transport Service

The Regional Air Transport Service will also be eligible for foreign investment upto 49% under Automatic Route.

#### 13. Satellites

Establishment and operation have been placed under the automatic route.

#### 14. Investment Company - SPV

It has now been decided that for infusion of foreign investment into an Indian company which does



not have any operations and also does not have any downstream investments, Government approval would not be required.

#### 15. Establishment and Transfer of Ownership and Control of Indian Companies

As per the FDI policy establishment and ownership or control of the Indian company in sectors/activities with caps requires Government approval. This provision has now been amended to provide that approval of the Government will be required if the company concerned is operating in sectors/activities which are under Government approval route rather than capped sectors.

#### 16. Swap of Shares- No Approval

No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

##### FIPB Approval Limit

It has been decided that the threshold limit for FIPB approval may be increased to ₹5000 crore.

## CORPORATE LAWS

### 1.0 Trade marks are not for hoarding

The Supreme Court stated last week that a company cannot claim the right to a trade mark if it registers the name but does not use it for a long time. It would be assumed that the company, by its lethargic conduct, had abandoned its right *Neon Laboratories Ltd. vs. Medical Technologies Ltd.*

### 2.0 SC asks Governments to junk Old Labour Cases

The government should not refer the grievance of an employee to the labour court if the complaint is made after a long lapse of time and has become 'stale'. The government has the power to refer a dispute to a labour court but even if the employee has a valid grievance, "a right not exercised for a long time is non-existent," the Supreme Court stated in its judgment.

The judgment stated the law of limitation does not apply to industrial disputes. Still, as a matter of "sound public policy", old cases should be ignored.

*Prabhakar vs Joint Director*

### 3.0 Insurer to pay interest on damages

The Rajasthan High Court has ruled that an insurance company would be liable to pay interest on delayed payment from the date of industrial accident besides the amount of compensation under the Workman's Compensation Act.

*National Insurance Co. vs Smt. Raju Bhai*

### 4.0 Govt doubles bonus eligibility ceiling

Now, all employees earning up to ₹ 21,000 a month will be eligible for bonuses, compared with the earlier cut-off of ₹ 10,000 a month. The government has also decided to raise the ceiling for calculation of bonus from ₹ 3,500 a month to ₹ 7,000 per month.

This implies, if an employee is earning a salary of up to ₹ 7,000 per month, he or she is entitled to get a bonus on his or her entire salary or wage. However, if the salary is between ₹ 7,000 and ₹ 21,000 a month, the payable bonus will be calculated by considering the salary at ₹ 7,000 a month.

### 5.0 Authorities can cancel tenders

The Supreme Court has quashed the Delhi High Court order and upheld the cancellation of the tender by South Delhi Municipal Corporation for civil works stating that the corporation, "being the custodian of public finance, took its decision objectively with bona fide intention to serve the best interest of the public in general. It has not committed any wrong in cancelling its earlier tender notice and ordering e-tender afresh.

## CAPITAL MARKET

### 1.0 Mandatory dividend policy for listed firms

The Securities and Exchange Board of India would require listed companies as well as those looking to get listed through the Initial Public Offering (IPO) route to state the circumstances under which their shareholders can or cannot expect a payout.

### 2.0 IPO Prospectus & Application trimmed to 5 pages

#### Key Points

1. Abridged prospectus, including the application form, cannot exceed five sheets. It has often been felt that investors find it difficult to get the key information from bulky documents.
2. The order in which items appear in the abridged prospectus shall be as specified by SEBI. The application form shall be so positioned that on the tearing-off of the application form, no part of the information given in the abridged prospectus is mutilated.
3. The information which is of generic nature and not specific to the issuer would need to



be brought out in the form of a General Information Document (GID).

**3.0 SEBI: Major Streamlining in Process of Public issue of Equity Shares and Convertibles**

- To reduce the time taken for listing after the closure of issue to 6 working days as against the present requirement of 12 working days, and
- To broad-base the reach of investors by substantially enhancing the points for submission of applications.
- All the investors applying in a public issue shall use only Application Supported by Blocked Amount (ASBA) facility for making payment i.e. just writing their bank account numbers and authorising the banks to make payment in case of allotment by signing the application forms, thus obviating the need of writing the cheques.
- In addition to the Self Certified Syndicate Banks (SCSBs), Syndicate Members and Registered Brokers of Stock Exchanges, the Registrars to an Issue and Share Transfer Agents (RTAs) and Depository Participants (DPs) registered with SEBI are now permitted to accept application forms (both physical as well as online) in public issues

**4.0 Major Opportunities for Depository Participants**

The RTAs and DPs shall provide their contact details, where the application forms shall be collected by them, to the recognized stock exchanges by November 30, 2015 as per the format.

**Processing of Applications by Intermediaries**

Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in application forms on the electronic bidding system of stock exchange(s) and submitting the form to SCSBs.

**Alerts by Stock Exchanges**

Similar to the systems prevalent in case of secondary market transactions, the stock exchanges shall develop the systems to facilitate the investors to view the status of their public issue applications on their websites and sending the details of applications and allotments through SMS and E-mail alerts to the investors

**DIRECT/INDIRECT TAXATION**

**1.0 Indirect Tax Mop up Surges 36.8% in Oct**

Indirect tax collections grew 36.8% in October led by a surge in revenue from excise Duty. The Collections continue to suggest a healthy growth in the underlying tax base.

**2.0 Swachh Bharat cess of 0.5% on taxable services**

The government will impose a Swachh Bharat cess of 0.5% on all services presently liable for services tax, with effect from November 15.

**3.0 CBEC revises arrest, prosecution norms**

The Central Board of Excise and Customs (CBEC) has revised the monetary limits for arrest and its guidelines for prosecution in matters relating to offences punishable under Customs, Central Excise and Service Tax laws.

Arrest in respect of an offence should be effected only in exceptional situations where

- the value of the goods involved is ₹ 20 lakh or more,
- smuggling of high value goods such as precious metals,
- restricted items or prohibited items,
- wilful misdeclaration in description of goods,
- concealment of goods where the value of such goods is ₹ 1 Crore or more.
- Fraudulent availment of duty drawback etc.

FINANCIAL INDICATORS				
	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.3671	0.3206	0.3116	0.2799
SENSEX	25482.52	26904.11	28101.72	27507.3
NIFTY	7731.8	8143.6	8525.6	8325.25
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	7.25	7.5
REVERSE REPO (%)	5.75	5.75	6.25	6.5
Gold (per 10 gm)	25184	26568	24761	26914
Silver (per kg)	33754	36560	34020	37664
Crude (USD/bbl)	44.55	49.95	48.74	59.24
₹ vs USD	66.1138	64.7260	63.759	63.8495
₹ vs Euro	70.3914	73.5999	69.8799	71.5114
₹ vs 100 Yen	53.63	53.86	51.22	53.25
₹ vs RMB	10.3840	10.2596	10.2689	10.3321
₹ vs Pound	100.5128	99.2962	98.7563	98.4687
MCX Aluminium (per kg)	96.1	103.85	99	118.6
MCX Copper (per kg)	306.05	336.55	328.1	408.65

\*As on November 18, 2015 (Sources: MoneyControl, NSE, BSE, RBI, MCX)



#### 4.0 Exporters entitled to twin excise rebates

An exporter is entitled to rebate in excise duty both on the inputs and on the manufactured product, when excise duty is paid on a manufactured product and also on the inputs. The Supreme Court stated so while allowing several appeals by exporters.

#### 6.0 Credit can be taken on basis of invoices addressed to assessee or endorsed in his favour

The High Court of Madras held that credit of duty-paid returned goods can be allowed only if invoice is in name of person availing credit or invoice is endorsed in favour of assessee; credit cannot be taken on invoice in name of a third party.

*Automotive Coaches & Components Ltd. v. CCE, Puducherry Commissionerate [2015] 62 taxmann.com 28*

#### 5.0 Service provider liable if employee embezzles money

The National Commission held that misappropriation of funds by an employee of an organisation does not absolve the legal and financial liability of the organisation.

*Mamta and Hari Prasad vs. Postal Authorities, M.P.*

#### 7.0 No search proceedings against client due to seizure of CA's hard disk containing ITR data of client

The hard disk recovered from computer belonging to CA during search on CA's premises containing workings supporting client's ITR filing cannot be said to "belong to the client". Therefore, section 153C cannot be invoked against the client based on such seized hard disk. Merely because the data pertained to the client, the hard disk seized from CA cannot be said to belong to the client

*Commissioner of Income Tax.-7 v. RRJ Securities Ltd. [2015] 62 taxmann.com 391*

#### 8.0 Advances received for job work couldn't be held as deemed dividend

The Supreme Court of India dismissed Special Leave Petition against High Court's ruling that advances received by assessee - shareholder under an agreement to do job work for company could not be treated as deemed dividend.

*CIT-I v. Amrik Singh [2015] 62 taxmann.com 213*

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