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EDITORIAL

Accounting of Public Spending



CA Vinod Jain*

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

Our Honorable Chief Minister of Delhi, announced a special seven day drive of removing Malba, dust and garbage in case he receives photographs through a special mobile application. Huge amounts were spent on the entire exercise specially on advertisement. Delhi did not see any result and the outcome couldn't be measured, in the absence of accounting, Management Information System, proper checks and control and no provision for monitoring of

outcome. **The Chartered Accountant profession, hereby, volunteers setting up of the entire system of accounting of public spending including:-**

- A transparent pre sanction detailed techno economic feasibility study
- Disclosure of the entire break up of plan, technical specifications, description of Bills of Quantity, including standard service level, quality levels and other terms or condition proposed to the potential bidders through a transparent electronic public procurement process.
- Post sanction implementation monitoring including accounting, internal control, delegation of powers and record keeping of actual deliveries against the committed deliverable by measurement of actual physical outcome. A regular step by step website disclosure and invitation of public questioning will ensure that Bill of Quantity (BOQ) is adhered in letter and spirit.

Public Accounting in a transparent manner and its disclosure to the entire democracy is mandatory for structured and monitor growth. The government has specified detailed disclosure, transparency requirement beside compliances for the private sector. The similar accounting disclosure requirement as well as internal control

WTO: Will Nairobi Round Push International Trade

The Ministerial Conference is a top decision making body of World Trade Organisation. The 10th Ministerial Conference would be held in Nairobi, Kenya from December 15-18, 2015. Last 3 rounds have not brought any major positive movement or result. The WTO framework, currently in operation is on the basis of Doha round and has determined various mandatory guidelines in relation to International Trade including Tariff Barriers, non-tariff Barriers, Most Favoured Nation treatment, anti-dumping, anti-subsidy and other several norms, determining trade relationships of more than 150 countries.

G7 countries have been using WTO as a major tool to serve their interest. Negotiations in Doha round got stuck on the issue of food security, public procurement, agriculture subsidy, working conditions etc. To circumvent WTO, USA & 12 other countries have entered into Trans Pacific Pact. Similarly USA is in final stage of signing TIPP with EU. These multilateral and plurilateral pacts being parallel to WTO framework are giving special advantage to the signatory countries at the cost of rest of the world. **It is worth noticing that China & India have been kept out of TPP & TIPP. These pacts are hurting the MFN treatment, in the name of harmonisation of standard.**

India and China now need to strategize together as to how to counter these pacts by signing similar parallel pacts with select countries or to push new strategies on the WTO framework itself to make the WTO move in a manner that all parallel pacts are killed. India & China with the support of Russia, South Africa, select south American countries and the entire Asian and African continent can decide to have a completely new strategy to remove WTO hurdles in negotiation on the one hand and to find out to new issues and methodologies to ensure safeguard of their own interest. That would mean, accepting partly the pressure of the developed world on the WTO platform, while simultaneously taking away larger benefits in WTO negotiation to safeguard Indian (domestic) interest in all the 4-5 Strategic contentious issue, a new vision of the Hon'ble PM and intellectual panel can guide a new direction.

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LATEST IN FINANCE

1.0 Stress on bank loans reduced in first half F.Y.16 : ICRA

The banking sector saw a moderation in the pace of stressed asset formation from around 5.6 per cent in FY15 to 3.3 per cent in the first half of FY16. Including the exposure refinanced under 5/25 scheme, however, stressed assets formation remained high at about 5.5-6 per cent during the period.

Banks' credit growth dropped to a multi-year low of 8.8 per cent and overall systemic credit growth (including corporate bonds and commercial paper) was higher at 11.6 per cent.

2.0 Norms relaxed for claiming personal accident cover under RuPay Cards

The Finance Ministry has increased the usage period of RuPay Cards to 90 days from the earlier limit of 45 days for a claim under the inbuilt accident insurance cover of Rs.1 lakh.

3.0 Foreign banks buy up bulk of Indian State Government Debt

Three banks snapped up almost 90 percent of bonds sold by Indian states to foreigners, and turned them into derivatives, raising the prospect of more volatility in one of Asia's best performing debt markets. Rs.30,000 crore out of the Rs.35,000 crore bonds on offer in October have been picked up by 3 banks.

4.0 Investment by a person resident outside India in an Investment Vehicle

- A person resident outside India including an RFPI and an NRI may invest in units of Investment Vehicles subject to the conditions laid down in this Schedule.
- The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.
- A person resident outside India who has acquired or purchased units in accordance with this Schedule may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.
- Downstream investment by an Investment Vehicle shall be regarded as foreign investment

if neither the Sponsor **nor** the Manager nor the Investment Manager is Indian 'owned and controlled' as defined in Regulation 14 of the principal Regulations. [*"nor" to be replaced by "and" (Major Drafting Error)*]

Source: Notification [NO.FEMA.355/2015-RB]/GSR 858(E), DATED 16-11-2015

5.0 Foreign Borrowing Norms relaxed

For Rupee Denominated External Commercial Borrowings, the rate will be commensurate with the prevailing market conditions. The penal interest for default or breach of covenants is capped at two per cent over and above the contracted rate of interest

For ECB with a minimum three-to-five-year average maturity, the all in cost ceiling is 300 basis points over the six month London Interbank Offer Rate (LIBOR), or applicable benchmark for the respective currency. The ECB with an average maturity of over five years will carry a ceiling of 450bps over the six-month Libor.

Apart from usual lenders like banks such rupee resources can now be borrowed from sovereign wealth funds, pension funds and insurance companies according to the final guidelines. The liberal approach with fewer restrictions on end uses and higher all in cost ceiling will help for long term foreign currency borrowings as the extended term makes repayments more sustainable and minimises roll over for the borrower .

More Liberal Norms

In Focus : RBI allows more liberal norms for external commercial borrowing effective from 1 April

Hit Abroad: Rupee denominated bonds (**Masala Bonds**) which are already which are already being issued in large numbers, are a huge hit with Japanese retail investors.

Effect on Currency: As more such bonds are issued, rupee will become more international and strong.

6.0 Divestment, Exports, Infrastructure get Government push**Major Cabinet Decisions**

- Cabinet okays 10% stake sale in Coal India, eyes Rs 20,000 crore
- 3% interest subvention scheme to be



EDITORIAL

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WTO:

Accounting of Public Spending

mechanism is to be put in place for the Central Government, State government and local bodies. The various social schemes, planned expenditure as well as unplanned expenditure needs to be properly accounted for, Management Information System to be put in place with clear cut governance process. In the absence of above, the public funds will always be misused. For Example- Education Cess meant for modernization and infrastructure had been mainly spent on mid-day meal for last several years.

The Institute of Chartered Accountants of India (ICAI) can provide a framework and organise Chartered Accountants into groups to provide necessary technology including hand holding of the implementation. This will ensure eradication of mad competition in the tendering process and will provide suitable remuneration for professional services and high quality result to the Central Government, State Government, Indian Railways, National Highway Authority of India, Public Sector Units (PSUs) and all other similar initiative & schemes of government. The exercise can be funded to ICAI body for onward Chartered Accountant groups to support the exercise professionally.

Limitation of Benefit Protocol (LBO)

In the International DTAA, USA, Europe, and Australia have provided major relaxation mutually, without providing similar LBO benefit to the citizen of India and other developing countries. This is clearly against WTO pact.

Services : The General Agreement on Trade in Services has not moved much due to insistence on movement of natural person, to be made free, being insisted upon by India, China and developing countries. No developed country is comfortable in the free movement of natural person. Accordingly, the time is right to at least negotiate on other parameters. For example: in accounting sector, or in medicine the requirement for mutual recognition of qualifications need to be institutionalised at world level (e.g. IFAC in case of Accounting qualification), requirement for permanent residency, requirement of citizenship could be negotiated harder, while leaving movement's natural person matter to bilateral negotiation, requisite safeguards against terrorism, anti- national and other illegal activities. America's shrewd trade & economic politics in the WTO framework can be countered only by shrewd and well planned strategies of the Indian & China to be supported by Russia and Africa.

applicable from April 1, 2015, to boost exports

- Faster clearances for road projects, as ministry empowered to clear projects worth up to Rs 1,000 cr excluding land.
- **Sugar Industry:** CCEA okays production subsidy of Rs 4.5 a quintal of cane crushed for sugar directly to growers

7.0 NBFCs step in to lend more to SMEs

An increasing number of Non-Banking Finance Companies (NBFCs) are ramping up their reach to Small and Medium Enterprises (SMEs) to tap these "High quality borrowers". Bank lending to this sector declined 3.3 per cent in April-September this fiscal

8.0 'NBFC-MFIs: Revision of the loan amount with tenure not less than 24 months

RBI has extended the limit of the loan amount for NBFC-MFIs, for which the tenure shall not be less than 24 months, and limit raised to Rs. 30,000. All loans necessarily be prepaid without any penalty, as hitherto.

9.0 Currency Swap facility extended to SAARC members

The Union Cabinet has approved extending the currency swap facility for SAARC members, under which the RBI offers the facility of varying sizes not exceeding \$2 billion in total, to SAARC Members.

10.0 Government puts final touches to Strategic Stake-Sale policy framework- The Road to Disinvestment

- Draft note on policy for strategic sale of distressed PSUs being circulated
- Cabinet likely to approve the note by December end
- Disinvestment Commission to decide whether to sell or revive sick Public Sector Units.
- Assets of unlisted loss-making PSUs might go under the hammer
- Assets to include factories, warehouses, hotels, office buildings and land parcels



- Cabinet secretary has been meeting various ministries regarding their companies
- FY16 disinvestment target Rs 69,500 cr - Rs 41,000 cr from stake sale in listed profitable PSUs and the remaining from strategic sales
- So far, only Rs 12,600 cr garnered from four stake sales through "Offer For Sale" route

11.0 Sovereign Gold Bonds Subscription

The Reserve Bank of India (RBI) said the total subscription denominated in units of gold for the first tranche of sovereign gold bonds stood at 9,15,953 grams amounting to Rs 246 crore.

12.0 Government defines Manufacturing for FDI

India has activated recent policy changes that liberalised foreign direct investment (FDI) rules and has spelt out the definition of the term "manufacturing" to provide clarity to companies and promote ecommerce.

Under the revised policy, a company manufacturing goods in India is free to sell online without any restrictions. However, the term "manufacturing" had not been clearly defined in the policy. As per the definition by the Department of Industrial Policy and Promotion, "any change in the physical object resulting in transformation of the object into a distinct article with a different name or bringing a new object into existence with a different chemical composition or integral structure" would qualify as manufacturing.

Companies that assemble products in India, such as those in the automobile and telecom sectors, stand to gain while those that have simply been processing or relabeling products won't qualify as manufacturers, according to experts.

13.0 Online Portal Launched to promote small traders' Biz

With an aim of promoting interests of Rs.5.77 crore small businesses, an online portal e-lala was launched to promote business-to-business and trader-to-customer transactions and reduce costs. Urban Development Minister M Venkaiah Naidu inaugurated e-lala, an e-commerce portal of Confederation of All India Traders(CAIT)

14.0 BRICS bank to issue bonds

The New Development Bank (NDB), floated by the BRICS nations to step up infrastructure funding in emerging economies, has decided to raise funds in the financial markets by issuing

bonds. Last year, the five BRICS countries — Brazil, Russia, India, China and South Africa — announced the establishment of the NDB which had an initial authorised capital of \$100 billion and it will start its operations early next year.

15.0 India to launch \$1-b equity fund for renewable energy

India proposes to launch a \$1-billion equity fund, with seed capital from public sector units, to support renewable energy companies.

Government hopes to launch a \$1-billion private equity fund where the government companies will seed the initial capital and then at a later date will look at foreign capital to pool with it to provide equity support to companies which want to come and invest in India's renewable energy sector.

16.0 Revised FDI regulations allow single-brand retail companies with stores to sell online

Single-brand retail companies wanting to sell on ecommerce platforms will be able to do so only if they have a licence for setting up physical outlets, according to revised foreign direct investment regulations.

CAPITAL MARKET

1.0 SEBI grants Exit Option to dissenting investors

Companies will have to give an exit option to shareholders if the money raised through a public issue is not utilized for the reason stated in the offer document as cleared by Securities and Exchange Board of India.

2.0 Foreign Portfolio Investors allowed to buy bonds in default

The Reserve Bank of India is allowing foreign investors to buy corporate bonds that are either totally or partly in default, with a minimum 3 years maturity balance.

3.0 RBI Nod to three cos to set up Trade Discounting System

Reserve Bank of India (RBI) granted an "in-principle" approval to three companies to set up and operate a new Trade Receivables Discounting System (TReDS) to be formed under the Payment and Settlement System (PSS) Act 2007.

A joint venture between the National Stock Exchange's NSE Strategic Investment



Corporation Limited (NSICL) and Small Industries Development Bank of India (SIDBI), private sector lender Axis Bank and Gurgaon based Mynd Solutions Pvt Ltd has been granted the node to start a new TReDS system. The approval is valid for 6 months.

4.0 **RBI nod must for investors picking up more than 5% Stake in a private bank**

To have a greater scrutiny over banking ownership the Reserve bank of India has said that new investors who buy over 5 per cent shares or convertible debt of a private sector bank will have to get the central bank's approval.

Existing promoters will also have to take the RBI's approval if they intend to increase their holding to beyond 10 per cent in the bank.

The shareholders having 5 per cent or more of the paid up share capital of a bank would have to give an annual declaration on their 'Fit and Proper' status. However, the major shareholder will have furnish the details of the source of funds for such incremental acquisition and obtain 'no objection' from the concerned bank.

5.0 **Listing norm breach may lead to freezing of promoter holding**

The Securities and Exchange Board of India warned of specific consequences if entities are found to be breaching the listing regulations on an exchange. One of these is the freezing of promoter and promoter group holding in such an entity.

6.0 **SEBI outlines new listing norms for exchanges**

Paving the way for stock exchanges to list, SEBI outlined the broad guidelines for an Initial Public Offering (IPO) by bourses. The securities market regulator has made it mandatory for stock exchanges to ensure that the minimum public shareholding is at least 51 per cent.

7.0 **SEBI to set rules, offer sops for Green Bonds**

- **What are green bonds?**

Structured like ordinary bonds but will invest in only those companies and projects that help in reducing carbon footprint

- **Projects they invest in**

Renewable energy, energy efficiency, sustainable waste management, sustainable land use, biodiversity conservation, clean

transportation, sustainable water management and climate change adaptation

- **Special dispensations**

No special dispensations allowed, apart from them being under RBI's infrastructure bond category. Do not attract statutory requirements such as CRR & SLR

- **Funds raised by these bonds globally**

\$12.9-billion raised during the second quarter of 2015, bringing year-to-date totals to roughly \$19.2 billion. Last year, fund-raising globally touched a record high of \$37 billion

8.0 **Debt paper: Rule change likely for Mutual Fund investment**

- Investment limit in a single issuer to be changed to less than 15%, depending on the rating of the paper.
- At present, Securities and Exchange Board of India restricts investment in rated investment grade debt instruments issued by a single issuer to 15 per cent of the scheme's Net Assets Value
- About Rs 1 lakh crore of mutual funds' assets under management exposed to papers perceived to be high risk
- **SEBI wants mutual funds to stop relying on credit rating agencies, build own risk assessment system**
- SEBI asks fund houses to follow best practices guidelines on upfront commission

CORPORATE LAWS

1.0 **No restriction on ESOPs given to independent directors earlier**

Securities and Exchange Board of India (SEBI) said independent directors can exercise their ESOP (Employee Stock Ownership Plan) granted to them earlier. The restrictions apply only on fresh grant of ESOPs that were issued after new SEBI's guidelines came into force.



2.0 Government May Consolidate Private Sector Employee Benefits

The Labour Ministry is finalising the social security code that would amalgamate half a dozen laws to simplify social security regulations besides allowing working women to avail longer maternity leave and make gratuity portable.

The key laws that will be subsumed under such a social security code include the Employees Provident Fund & Miscellaneous Provision Act, 1952, the Employees' State Insurance Act, 1948, the Employees' Compensation Act, 1923, the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961.

3.0 President clears Madhya Pradesh labour reforms

Companies employing up to 300 workers will be allowed to retrench workers or shut shop without government approval in Madhya Pradesh against the provision for up to 100 workers earlier.

Easier Rules

- Retrenched workers to get at least 3 months' compensation
- In the event of a dispute, a worker has to approach conciliation officers within 3 years
- Workers to get earned leave after 6 months, which could be availed of in the same calendar year
- Overtime hours in a quarter raised from 75 hours to 125 hours
- Women can work in night shifts; state govt to ensure security
- Plant & machinery to be excluded in calculating building and construction cess.

4.0 Extension of Date for Annual Return Filing

It has been decided to relax the additional fees payable on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto 30.12.2015, wherever additional fee is applicable.

Source: General Circular 15/2015 [F.NO.01/34/2013 CL-V], DATED 30-11-2015

5.0 Highlights of Special Investigation Team (SIT) Report on "Shell Companies and Beneficial Ownership"

- There are 2627 persons holding Directorship in more than 20 Companies in violation of Section 165 of the Companies Act, 2013. It

may be mentioned this is also in violation of s. 275 of the erstwhile Companies Act, 1956. The total number of Companies involved is 77696.

- A total of 345 addresses have at least 20 Companies operating from the same address. The total number of Companies sharing their address with at least 19 more Companies are 13581 in number.

AUDIT

1.0 Disciplinary cases: CA Institute plans 'e-hearing' facility

The Chartered Accountant Institute plans to usher in the facility of 'e-hearing' for its disciplinary cases, its President Manoj Fadnis has said.

2.0 Auditors use algorithms to scan books minutely

Algorithms, the software programs that are increasingly replacing humans in many complex jobs where precision and speed decide the winner, are becoming an essential tool for auditors as well. The different tools used by the auditors give them specifics of even the smallest of transactions once it is defined by the auditor. The auditors need to have a basic know how to run these tools but the results are transparent and elaborate.

3.0 ICAI director finds NSEL auditor guilty of misconduct

The director (discipline) of the ICAI, the apex body of chartered accountants, has formed a prima-facie opinion, finding the auditor of the National Spot Exchange (NSEL) guilty of professional misconduct.

DIRECT TAXATION

1.0 Income Tax Appellate Tribunal does not have power to stay tax prosecution: HC

In the case of *Jindal Steel & Power Limited*, the Punjab & Haryana High Court has said that the ITAT doesn't have the power to stay tax prosecutions.

2.0 No TP adjustment for corporate guarantee issued by parent-Co. on behalf of its subsidiary-Co.

The ITAT Ahmedabad Bench 'D' held that the issuance of corporate guarantees by holding



company on behalf of its subsidiary where it is done to provide or compensate for lack of subsidiary's core strength to raise bank finances is in the nature of quasi capital or shareholder activity and does not amount to a service in respect of which arm's length adjustment can be done. This is a transaction which cannot happen in an arm's length situation. This is because no bank will ever issue a guarantee in favour of an entity which lacks creditworthiness to raise a loan. It is inherently impossible to decide arm's length price of a transaction which cannot take place in an arm's length situation.

Micro Ink Ltd. v. ACIT [2015] 63 taxmann.com 353

3.0 Holding period of capital asset shall not include period for which it was held as stock in trade

The High Court of Delhi held that where stock in trade is converted into capital asset, the holding period for the purposes of classifying it as long-term or short-term capital asset shall be reckoned excluding the period for which it was held as stock-in-trade prior to conversion.

Commissioner of Income-tax -Delhi -I v. Abhinandan Investment Ltd. [2015] 63 taxmann.com 263

INDIRECT TAXATION

1.0 Finance Ministry notifies revised duty drawbacks rates

The FM notified revised rates of duty drawback that will be effective from November 23.

Duty drawback rates raised on engineering goods, leather handbags, readymade garments made of cotton wool and cotton with lycra, shrimps. Two percentage points rise in duty drawback for engineering sector to allow higher tax refund to exporters of machinery and appliances, electrical machinery, tools among others.

2.0 Three excise rules declared unconstitutional

In the case of *Shree Bhagwati Steel Rolling Mills* The Supreme Court ruled that the demand for interest and penalty under Rules 96ZO, 96 ZP and 96 ZQ of the Central Excise Rules was illegal.

The direct and immediate impact upon the fundamental right of the citizen is that he is exposed to a huge liability by way of penalty for reasons which may in given circumstances be beyond his control and/or for delay which may be minimal.

The possibility of achieving the object of deterrence in such cases can be achieved by imposing a less drastic restraint.

3.0 Tax sop to spur ship building

The government has announced a slew of tax sops to spur shipbuilding in the country as part of measures aimed at boosting the Make in India programme. These include exemption from customs and central excise duties on all raw material and parts for use in the manufacture of ships, vessels, tugs and pusher crafts.

4.0 Job worker couldn't be treated as agent just because assessee had given loan to it for buying machinery

The Apex Court held that merely because principal manufacturer has extended loan to job-worker for investment in machinery, job-worker cannot be regarded as dummy of principal manufacturer.

CCE, Bangalore v. Campeco [2015] 62 taxmann.com 273

5.0 No need to affix MRP on goods declared to be 'not for retail sale'

The Supreme Court of held that where assessee had declared on goods that they were not meant for retail sale and revenue could not produce any evidence to contrary, there was no requirement to affix MRP thereon and goods were to be valued based on transaction value under section 4.

CCE, Noida v. Control & Switchgears Contactors Ltd [2015] 63 taxmann.com 82

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.4920	0.3671	0.333	0.2808
SENSEX	25252.32	25482.52	25622.17	27730.21
NIFTY	7683.30	7731.8	7788.1	8353.1
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	7.25	7.25
REVERSE REPO (%)	5.75	5.75	6.25	6.25
Gold (per 10 gm)	25324	25184	25952	26716
Silver (per kg)	33841	33754	34910	36502
Crude (USD/bbl)	40.45	44.55	48.89	63.2
₹ vs USD	66.7905	66.1138	63.759	63.8495
₹ vs Euro	73.4629	70.3914	74.7139	72.3186
₹ vs 100 Yen	54.91	53.63	55.14	51.73
₹ vs RMB	10.3715	10.3840	10.4082	10.234
₹ vs Pound	101.3679	100.5128	102.293	100.9361
MCX Aluminium (per kg)	98.75	96.1	107	105.15
MCX Copper (per kg)	304.05	306.05	356.1	361.45

*As on December 10, 2015

(Sources: MoneyControl, NSE, BSE, RBI, MCX)

EDITORIAL

Foreign Direct investment-Defense Sector-big Opportunity - Safeguards to be in place

The Government of India has recently announced large scale liberalization in the defense sector including up to 100% of Foreign ownership under approval route. On one hand this has given a major boost to Indian entrepreneur like Reliance, TATA, Baba Kalyani and thousands others to plan large scale production units in high tech defense sector. A large number of International companies including the top five defense manufacturers in the world are very swiftly firming up their plans to make defense equipment in India

In the backdrop of majority and up to 100% foreign ownership, major apprehension on the sovereign, safety and integrity of India are being raised. While we support

the latest initiative of liberalization, at the same time sovereign risk needs to be addressed by adequate safeguards. We suggest as a mandatory condition while granting approval, the Indian government should provide for rights of regular inspection, regulation of sales including export, scrap disposal, placement of permanent security including military personnel and regular visit of security agency. The sale, scrap, information and raw material and components movement need close 100% monitoring. The license condition should provide for sovereign action including right to recall the license, in case of any risk or even potential of any risk. **We can't and we will not repeat East India Company. India is capable, competent, strong, credible and is fully confident.**

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