A Journal of All India Chartered Accountants' Society

AICAS
ESTD. - 1989

The Chartered Accountant World

Volume XXVII | No. 1 | January 2016

ANNUAL SUBSCRIPTION:

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/-)

Happy New Year 2016

EDITORIAL

RBI- In need to act efficiently, effectively and pragmatically

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RBI has been among the best regulators in the world, managing the financial markets and various other important aspects of the Indian economy with a visionary, practical, positive and dynamic approach during more than last 5 decades.

In recent past, it has been observed that the basic values and virtues built by RBI are being pierced, one after another. A recent informal directive (advisory) to all the public sector and private sector banks, to downgrade, more than 150 top borrowers as Non-Performing Assets and to make retrospective provisioning is one such example. The NPA provisioning norms have been one of the tightest regulations in the world. In terms of the latest directive, exposure of the banks in three categories is proposed to be downgraded, based on asset quality review. The exposure of Indian banking sector to such accounts is estimated in the range of Rs 1.5 lakh crore to about Rs 2 lakh crore, which will be about 3% of the total credit exposure of the banking sector.The real concern of RBI about asset quality has to be adressed in stages. The impact will be more than serious on fund based and non-fund based exposures as well as working of the industry.

Regulations are to ensure fair play and cannot be a burden. No regulation should hurt or kill the genuine business activity.

Backdrop

The global economy including China, Europe and all major economies have been facing steep challanges. The Indian Economy has passed through a fairly tough time during about last 5 years and more specifically in last 3 years. Almost all the major borrowing sectors had been suffering due to policy bottleneck. The credit off take has reduced very sharply. The fresh investments have not been forth coming except in limited sectors like e-commerce. IIP index is showing a negative growth. Some of the prominent sectors impacted by slow down, for example:

- **Power Sector-** no further disbursement in spite of financial closure for many years. No additional sanctions or disbursements for new projects. Recent initiatives of government are in right direction.
- **Roads and Highway Sector-** NHAI has recently come out with suitable solutions for recommencement of construction, in most of the projects which were standstill for more than 3 years.
- **Real-estate and Infrastructure** are creating new records of downfall in prices and substantial negative growth. Housing sector has specially suffered.
- **Commodities-** International and National commodity prices, in most of the cases, are ruling at their last 10 year low thereby impacting steel industry, construction, and other commodity based sectors. The Chinese, European and American markets are leading the commodity prices free fall.

Implications

The Government of India has taken major steps and policy initiatives to revive the economy, in spite of, international economic challenges. The Finance Minister has committed to the nation that no retrospective amendments or regulations are brought in.

In case the advisory of RBI is accepted, including retrospective provisioning, without taking corrective action, including special dispensation for certain specific ailing sectors, the following implications may arise out of retrospective provisioning at such a large magnitude:

- Declared financials of these banks for earlier years will be proven wrong.

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LATEST IN FINANCE

1.0 UDAY – Target linked MoU designed, no benefits if discoms default

- The Centre is hopeful of getting at least 21 states on board for Ujjawal Discom Assurance Yojana (UDAY) reforms
- For the states that sign up for UDAY, one of the first steps is to take over 75 per cent of DISCOM debt as on September 30, 2015 over two years - 50 per cent in 2015-16 and 25 per cent in 2016-17.
- The state borrowing would be issued as Non-SLR State Development Loans.
- With loans being part of the capital expenditure in the state's Budget, the Centre is hopeful of bringing down interest rates further.

The Bait

- Waiving unpaid overdue interest payment of discoms
- Additional grant under Centre-sponsored schemes
- Increased supply of domestic coal
- Faster completion of intrastate transmission lines

The Switch

- No future lending by PSU banks and FIs

2.0 Line of credit – streamlined

The government has approved the new Indian Development Assistance Scheme (IDEAS) to streamline Lines of Credit (LOC) offered to various countries in South Asia, SE Asia, Africa and Central America emphasizing on timely completion of projects. The initiative includes provisions to provide better terms of credit. Several changes have been made in the operational guidelines such as making Detailed Project Report, strengthening of monitoring system, pre-qualification of competent companies and requirement of regular reports by the borrowing governments.

3.0 Roads – a big opportunity

Road projects worth Rs. 50,000 crore to be offered under PPP in FY17

- This will be the largest chunk of projects to be awarded by ministry under PPP mode in a single financial year.
- 5000 km roads to be awarded to private players for construction
- Bids for religious tourism circuit programme including Char Dham connectivity and the Bharat Mala project will also be invited.

4.0 Steel ministry for removing duty exemption categories

- After anti-dumping and safeguard duties, the Union ministry of steel wants to plug another trade route to prevent cheaper imports. It has recommended that Rule 11(1)(c) for imposition of countervailing duty (CVD) be amended, so that a duty can be imposed on exempted categories of steel imports.
- Domestic industry has been complaining about below-cost import from China and Korea. Increased import has pushed domestic companies into losses.

5.0 Solar Power : Cost cut imminent

Indicating a continued downward slide in solar photovoltaic (PV) power project tariffs, the Central Electricity Regulatory Commission (CERC) has proposed nearly 20% cut in the benchmark capital cost of such projects for FY17 compared to the current financial year.

While the average tariff for the bids invited by states this year has hovered around Rs. 6 per unit, the recently concluded bid under the national solar mission saw the solar tariff plummeting to a historic low of Rs. 4.63 per unit.

Capital cost norms for solar PV projects

(₹ lakh/MW)	FY16	FY17
PV modules	332.35	310.19
Land cost	25	25
Civil and general works	50	35
Mounting structures	50	35
Power conditioning unit	45	30
Evacuation cost up to inter-connection point (cables and transformers)	55	40
Preliminary and pre-operative expenses including IDC and contingency	48.50	26.13
Total capital cost	**605.85**	**501.32**

6.0 Smart City project may give municipal bonds fresh lifeline

The government is making a fresh push for Tier-II and Tier-III cities to issue municipal bonds, as this would help in financing projects under the Smart Cities initiative.

EDITORIAL

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RBI- In need to act efficiently, effectively and pragmatically

- Given the magnitude, the very credibility of the Indian banking sector, Statutory auditors and RBI itself will be questionable, having serious economic ramifications, including all sovereign credit rating of India.
- Capital adequacy and share prices including valuations thereof will be negatively impacted. The Indian public as well as investors will feel cheated and will lose confidence even in the financial markets impeding future investments in debt-equity of the banks.
- International branches of the banks will face closure or substantial reduction in their business due to lack of necessary capital adequacy, negative outlook and further potential asset quality risk.

  In fact, RBI itself is responsible for the current changing scenario:
- RBI permitted, inspite of repeated opposition by ICAI, appointments of branch auditors as well as central statutory auditors of the banks to be made by banks management itself. The number of branches subject to audit reduced dramatically, thereby reducing financial discipline and control by independently appointed auditors.
- Strategically sidelining Chartered Accountant directors by a series of negative initiatives including restricting their numbers, maximum 6 year limit on Board removing experienced Directors from banking system, restricting their number and role in credit monitoring.
- Permitting banks to continue to charge extremely high interest rates, including gross spread of 4% to 6%, as compared to international practice of 0.25% to 0.75%.
- Very stiff norms on international investments over regulations in P Note, External Commercial Borrowing and restricting M3 and availability of credit at reasonable terms and basis.
- Direct interference into day to day management of banks, especially public sector banks, including appointment of CMDs (resulting in very poor selection) and substantial delay,
- Appointment of consultants to select CMD, having no understanding of Indian financial markets.
- Recent interference in the setting up of proposed Banks Board Bureau (BBB)

RBI has made Open-disclosure of confidential, vulnerable issues now publically in a series of structured disclosures rather than confidential and effectively managing the problems of Indian borrowers. This has embarrassed Industry as well as current Indian Government.

The Indian businesses are competing with international companies borrowing at the rate of 3% to 4 % (LIBOR of US $ is 0.13%), while bearing 12% - 18% interest payment to the banking sector and 15% - 36% interest to Non Banking Finance Companies and unorganized financial market.

Certain Solutions to be examined

- Special nursing programmes for each suffering economic sector.
- A special debt restructuring scheme for various sectors which need nursing, rather than trying to kill the industry and businesses by downgrades. The schemes could be positively planned similar to UDAY brought out for power sector (DISCOM) by the Government.
- The government may empower banks to take over all major economic powers from the existing management, in carefully selected cases.The day to day management can continue as it is, while CFO and other observers are to be appointed by banks to ensure financial discipline.
- A part of the debt of the industry can be converted into equity or optionally / mandatorily fully convertible bonds (with a sell back option) to have the upside of the well performing units.
- The interest burden of the industry, business, services sector as well as real estate and infrastructure need to be curtailed down substantially with ease of credit offtake.
- The penal interest, interest on interest and interest charged over and above the base rate can be waived partly or fully in a judicious manner.
- The Government may consider to permit one time settlement scheme with payment of principal and simple interest within 3 months by the industry from any source, without any tax implication and complete immunity from PMLRA and similar other legal provisions.
- SME sector will need special scheme for their revival. The credit availability has to improve and too much dependence on collateral is impacting reasonable growth.

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7.0 New system for more secure online banking

A new system that uses images and a one-time numerical code may provide a secure, inexpensive and easy to use alternative to current password systems used in online banking and other such services, a new study suggests.

BANKING

1.0 RBI fixes 9.45 per cent base rate for NBFC-MFIs

In line with falling lending rates, Reserve Bank today fixed Base Rate or the Minimum Lending Rate at 9.45 per cent for NBFC Micro Finance Institutions (MFIs). The new base rate is effective quarter beginning January 1.

2.0 RBI issues norms for pricing banks' advances

The Reserve Bank of India (RBI) notified guidelines for banks for pricing their advances with reference to the Marginal Cost of funds based Lending Rate (MCLR). Currently the base rate, the minimum lending rate, is priced with reference to the average cost of funds.

Banks may specify interest reset dates on their floating rate loans and they will have the option to offer loans with reset dates linked either to the date of sanction of the loan/credit limits or to the date of review of MCLR.

3.0 Reserve Bank revises norms for 'when issued' security to boost trading

To encourage trading in 'When Issued' transactions in government securities, the Reserve Bank allowed banks to take short positions in this segment of trading, while mutual funds, insurance and pension funds, NBFCs and others are permitted to take long positions.

4.0 SC raises serious issues against RBI

The Supreme Court held that RBI should take rigid action against those banks and financial institutions which have been indulging in "disreputable business practices" and said it cannot withhold information on defaulters and other issues covered under the RTI Act.

"We have surmised that many financial institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those banks which have been practicing disreputable business practices," a bench comprising Justices M Y Eqbal and C Nagappan said.

RBI and the Banks have sidestepped the general public's demand to give the requisite information on the pretext of 'Fiduciary relationship' and 'Economic Interest'. This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

5.0 Lending to foreign step-down arms of Indian firms gets costlier

The Reserve Bank of India (RBI) said banks should make provisions of two per cent against loans given to a foreign step-down subsidiary of an Indian company.

6.0 Central bank plans to monitor peer-to-peer lending

The Reserve Bank of India (RBI) will soon release a discussion paper on unregulated peer-to-peer lending (P2PL) arrangements, which is lending money to unrelated individuals without assistance from any financial intermediary.

Several online portals have sprung up in India to facilitate such lending, some even getting private funding from investors, but it is still at a nascent stage.

INSURANCE

1.0 Crop Insurance

Given the tepid performance of current schemes, the government plans to launch a new scheme that would cap the premium paid at about 3% of the insured value, cover a substantial part of India's farmland and crop output and make processing of claims hassle-free.

2.0 Universal Health Insurance Plan- A better cover

After providing life cover and accident cover, the government is now working on a universal health insurance plan. To begin with, it will provide a seamless solution to the existing cashless health schemes in states by integrating those with the Centre's direct benefits transfer (DBT) platform. Later, these would be scaled up.

3.0 IRDAI tweaks norms for insurance marketing firms

The Insurance Regulatory and Development Authority of India (IRDAI) has said insurance marketing firms can procure products from two insurers each from the life, general and health categories, giving due intimation to the regulator.

4.0 IRDAI proposes changes in trade credit insurance norms

Trade credit insurance is an insurance policy offered by private insurance companies and governmental export credit agencies to business entities wishing to protect their accounts receivable from loss due to credit risks such as protracted default, insolvency or bankruptcy.

Insurance Regulatory and Development Authority of India (IRDAI) said it proposes to allow issuance of trade credit insurance policy to RBI registered entities, for conducting factoring business in line with The Factoring Act, 2011.

"This cover shall be restricted to short-term financing against receivables, representing supply of goods, materials and services," said the exposure draft.

CORPORATE & ALLIED LAWS

1.0 Enforcement Directorate probes PACL

- The Enforcement Directorate (ED) has initiated an inquiry against PACL for alleged money laundering under the Prevention of Money Laundering Act.
- SEBI had found that the company had raised about Rs 49,100 crore from 50 million investors through a collective investment scheme, which is illegal.
- The mobilisation of funds by PACL dates back to 1990s.
- The ED's decision comes on the heels of a SEBI order, issued a fortnight ago, to attach all the assets of the company and its directors.

2.0 Private Placement Amnesty

In respect of cases prior to April 01, 2014 involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.

Source: CIR/CFD/DIL3/18/2015 dtd. December 31, 2015

3.0 Payment of Bonus (Amendment) Bill

The Payment of Bonus Act has enhanced the limit of salary for availing bonus from Rs. 10,000 to Rs. 21,000.

4.0 Cheque Bounce Cases now to be filed where presented

Parliament has passed a law allowing cheque bounce cases to be filed at the place where the cheque is presented for clearance and not the place of issue, a change that is expected to go a long way in improving legal recourse in such cases.

5.0 Family accord prevails over law suits

The Supreme Court last week gave thumbs up to settlement of disputes against litigation among business family members when it ended three-decade row in the case, *Rajni Sanghi vs Western Indian State Motors Ltd.* The court ruled that if the parties settled their differences amicably, their agreement shall prevail though there were other proceedings like arbitration. Even if there is an arbitration award, which has not been made into a decree of the court, the family arrangement will override it.

6.0 Transfer of shareholding on basis of disputed MOU was clear act of oppression by respondent

The High Court of Bombay held that where respondent group on basis of a disputed MOU with appellant group had held board meeting, issued duplicate shares and transferred shareholding of appellant group in its favour at valuation which was not acceptable to appellant group, action of respondent group was a clear calculated act of grossest oppression.

Nafan B.V. v. SAF Yeast Company (P.) Ltd. [2015] 64 taxmann.com 55

7.0 In case of ***Buragohain Tea Co. Ltd.,*** the High Court of Delhi held that where Court in principle agreed to sanction scheme of amalgamation whereby entire undertaking of transferor company was proposed to be transferred to transferee company but found exchange ratio to

be unfair and unjust and not based on market realities, Registrar of Companies was to be directed to examine matter through experts and determine a fair and just exchange ratio. *[2015] 64 taxmann.com 11*

CAPITAL MARKET

1.0 Basic Services Demat Account (BSDA) – Mandatory

DPs are advised to convert all eligible demat accounts into BSDA unless such Beneficial Owners (BOs) specifically opt to continue to avail the facility of a regular demat account.

Source: CIR/MRD/DP/20/2015 dated December 11,2015

2.0 Top 500 companies – Additional disclosure

SEBI has mandated that top 500 listed companies to include 'Business Responsibility Report' in their Annual Returns, earlier the said requirement was for top 100 companies only.

Source: SEBI/LAD-NRO/GN/2015-16/27 dtd December 22, 2015

3.0 IPO irregularities: SEBI to refund disgorged funds to investors

The Securities and Exchange Board of India (SEBI) will distribute among eligible investors the funds it has collected through disgorgement orders in cases of IPO irregularities - a move that will benefit as many as 463,000 investors.

The total amount to be distributed is about Rs 18 crore, which includes Rs 7.35 crore recovered by Sebi through exercise of its newly conferred recovery powers.

SEBI has already distributed Rs 23.28 crore to 1.3 million investors in April 2010, out of which 799,000 investors were paid the full eligible amounts.

DIRECT TAXATION

1.0 Finance Ministry releases draft guidelines for Place of Effective Management Control

Place of Effective Management (POEM) means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made," said the Central Board of Direct Taxes, adding that it would be determined based on whether the company is engaged in active business outside India.

The CBDT, however, stressed that a foreign company would not be considered a resident taxpayer just because it is fully owned by an Indian firm, or some of its directors or local management is in India or existence of support functions in the country.

A company's head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets," it has clarified.

Under earlier guidelines, a company was considered a resident in any previous year, if it was an Indian company or if during that year, the control and management of its affairs was situated wholly in India.

Moreover, cases selected for limited scrutiny can be converted to complete scrutiny only with the approval of the Principal Commissioner of Income Tax or Commissioner of Income tax if the potential income escaping assessment exceeds a certain monetary limit.

2.0 SEBI – registered FPIs get I-T filing relief

The Central Board of Direct Taxes (CBDT) clarified that incomplete or deficient returns filed by Foreign Portfolio Investors (FPIs) would not be treated as "defective" if the entities were registered with SEBI and do not have a permanent base in India. This would provide relief to over 500 FPIs.

3.0 Tax department to quote email, phone no. in notices

The Finance Ministry has asked Income Tax department officials to mandatorily mention their email and official phone numbers in letters, notices and other email based communication to taxpayers.

4.0 Computer based Scrutiny by CBDT

The process of selecting tax cases for scrutiny on a random basis is being replaced by a system-based centralized approach.

The Central Board of Direct Taxes (CBDT) has devised a system-based method in a centralised manner through CASS (Computer Assisted Scrutiny Selection) whereby the selection is made on the basis of detailed analysis of risk parameters and 360 degree data profiling of taxpayers.

5.0 Mandatory Quoting of PAN Card

Nature of Transaction	Existing requirement	New requirement
Immovable property	Transactions worth ₹5 lakh or more	Sale/purchase exceeding Rs. 10 lakh
Time deposit	Exceeding Rs. 50,000 with any bank	Deposits with co-op banks, post office, Nidhi, NBFC will also need PAN, deposits aggregating Rs. 5 lakh or more per year will need PAN
Opening of a new bank account (expect time deposit)	All new accounts	Jan Dhan accounts excluded
Installation of cellphone/telephone connections	All instances	Discontinued
Hotel/ restaurant bills	Payments exceeding Rs. 25,000	Payments exceeding Rs. 50,000
Foreign travel	Cash payment in connection with foreign travel of an amount exceeding Rs. 25,000, including forex purchase	Cash payment in connection with foreign travel of an amountexceeding Rs. 50,000,including forex purchase
Shares of company	Share purchases worth Rs. 50,000 or more	Buying or selling shares worth Rs. 1 lakh of unlisted companies. Opening a demat account
Purchase or sale of goods and services	No requirement	Purchase/sale of any good/service exceeding Rs. 2 lakh per transaction
Cash cards/prepaid instruments under Payment and Settlement Act	No requirement	Cash payment aggregating to more than Rs. 50,000 a year

SOURCE: FINANCE MINISTRY

6.0 15CA, 15CB rules eased for payments to NRIs

- The Income Tax department (I-T Department) has simplified the disclosure norms for payments to non-residents, with most of these up to Rs 5 lakh in a year no longer to be disclosed in forms 15CA and 15CB.
- Beside, payment for imports do not require these two forms. Also, a certificate from a chartered accountant is only required for such payments which are taxable. The forms would have to be filled if the amount of payment in a year exceeds Rs 5 lakh.
- No forms 15CA and 15CB will be required to be furnished by an individual for remittance not requiring Reserve Bank approval under its Liberalised Remmittace Scheme.

7.0 Tax disputes up to Rs. 20 lakh to be dismissed

The Central Board of Direct Taxes (CBDT) recently increased the monetary limit for filing appeals by the Income Tax (I-T) department at the Tribunal to Rs 10 lakh from Rs 4 lakh; and to Rs 20 lakh from Rs 10 lakh at the high court. This means, the department cannot go for an appeal in cases where the disputed amount is below this threshold.

Since it is with retrospective effect, it applies to existing appeals filed, but pending decision. This means, all such appeals will be immediately withdrawn. However, CBDT has maintained the limit for appeals to be filed at the Supreme Court at Rs 25 lakh.

ACCOUNTS & AUDIT

1.0 Rules eased: auditors need to report to Centre corporate frauds of over Rs. 1 crore

Statutory auditors will now have to mandatorily report to the Centre all corporate frauds amounting to 1 crore or above. By specifying a threshold of 1 crore, the Ministry of Corporate Affairs (MCA) has now done away with the requirement to report immaterial frauds to the Centre.

- The auditor must first report the fraud to the company's audit panel
- The audit panel will have to give its views in 45 days
- Within 15 days of that, the auditor will have to send his report to the Centre
- Frauds amounting to less than Rs. 1 crore will need to be reported only to the company's audit panel.

2.0 Railways to introduce online system for tracking costs, Asset creation

The Railways is introducing an online system for tracking cost and output creation at divisional level for better Financial Management and Reporting that will usher in more transparency and efficiency in the system.

To be called "Performance and Activity Based Unit Costing", the process is expected to produce an outcome budget for the railways where it will be able to analyse stepwise costing of every asset created and services delivered.

Date of Printing : 12th January, 2016
R.N.I. No. 50796/90
Posting Date: 14th-15th January, 2016

Registration No. DL(c)-01/1268/2015-17
Licenced to post without prepayment No. U-(C)-82/2015-17

EDITORIAL

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RBI- In need to act efficiently, effectively and pragmatically

- The interest rate spread for the banking sector to be brought down in the range of 1% to 2% with effective interest rate between 7% to 10 % to industry and businesses.
- Professionalise the management with detailed internal and statutory audit and independent auditors.

The aforesaid analysis may look highly critical to certain quarters for which an open debate is needed to address all issues on a war-footing basis.

We cannot allow certain hidden hands to forge a conspiracy against our Great Nation and specially banking sector being the backbone of our economy.

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.138	0.492	0.3206	0.2858
SENSEX	24825	25252	26904	27573
NIFTY	7563	7683	8143	8328
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	6.75	7.25
REVERSE REPO (%)	5.75	5.75	5.75	6.25
Gold (per 10 gm)	26071	25324	26568	26014
Silver (per kg)	33481	33841	36560	35217
Crude (USD/bbl)	32.9	40.45	49.95	58.73
₹ vs USD	66.91	66.79	64.72	63.37
₹ vs Euro	72.77	73.46	73.59	70.43
₹ vs 100 Yen	56.78	54.91	53.86	51.97
₹ vs RMB	10.15	10.37	10.25	10.20
₹ vs Pound	97.28	101.36	99.29	97.65
MCX Aluminium (per kg)	99.05	98.75	103.85	104.7
MCX Copper (per kg)	297.2	304.05	336.55	357.25

**As on January 10, 2016* *(Sources: MoneyControl, NSE, BSE, RBI, MCX)*

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4696, Brij Bhawan 21A, Ansari Road,
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