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# **EDITORIAL**

# **GST - INDIA ON THE MOVE**



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

The government of India has been able to make substantial progress in one of the historical reforms, while passing constitutional Amendment Bill by Parliament, practically unanimously to bring in a common indirect tax " Goods and Services Tax".

The federal Union of India got further strengthened by "One India one market" gaining significant strength. The following benefits are envisaged:

- 1. Sub merger of most of the indirect taxes at State level and at Centre into one single Tax - GST.
- 2. Transparency in business processes.
- 3. No cascading effect of taxes, as credit for tax paid by the vendor supplying the goods will be fully adjustable in tax payable on sales invoices by the seller, at the time of sales- Seamless credit in successive transactions.
- 4. Destination or consumption based taxation i.e. the tax will be borne by ultimate consumer in the state of consuming goods and service.
- 5. Exports to be more competitive.
- 6. Movement of goods within India to ease significantly.
- 7. India to emerge as one single market, expanding growth potential.

The benefits could be many and all of them cannot be enlisted. The Modi Government biggest success is to achieve unanimity in Rajya Sabha, which will pave way for smoother parliament democracy and better political atmosphere, being most important for peace and progress.

BJP, PM Narendra Modi, Shri Arun Jaitely, Shri Amit Shah all are to be congratulated. At the same time congress, and entire UPA as well as communist party all are to be given adequate credit for their support.

### Task ahead

The constitution amendment bill is now required to be passed by majority of the Sates in their State legislature. Thereafter only the constitutional amendment will become valid on receiving President assent.

The real challenge will be to pass the detailed law for:

- Central GST
- State GST
- iii. Interstate (Integrated) GST

The actual drafts of these laws are to be fine-tuned before presenting the same before the parliament and all state legislatures. The bills will be required to be debated thread bare to examine all practical issues and to find workable solutions acceptable to all stakeholders. This looks simple but complexities will come as various stakeholders examine actual impact on them.

In all likelihood bills will be referred to select committee of parliament as well as of State level select committees of the state legislature, where all stakeholders will be heard.

It is important to not to pass the bill into final law in a hurry. Even the working Rules and Returns to form part of the law will be a still larger challenge. It will also be crucial to provide at least 6 months to 12 months for detailed examination and preparation to the users of law after the Act and Rules are in place, before they are notified. Any compromise on this aspect will severely impact businesses adversely. The law need to be disseminated, understood and all processes will need finalization by each stakeholder. Even the accounting and ERP software will have to be substantially upgraded and modified to change entirely in accordance with law. A reasonable target of final notified date could be 1st April 2019.

The following major decisions will also be important at the end of the Government:

Information technology backbone, system and processes.

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## THE CHARTERED ACCOUNTANT WORLD

# **LATEST IN FINANCE**

# **LATEST IN FINANCE**

# 1.0 New FDI norms will make India a defence export hub

The recent relaxation of foreign investment norms in the defence sector will transform the country into an "export hub" for weapons and armaments in the future, said Defence Minister.

# 2.0 Net neutrality rules should be same for all: Telcos

The Cellular Operators Association of India and the Association of Unified Telecom Service Providers of India have submitted a joint response to the Telecom Regulatory Authority of India (TRAI). The telecom sector should not be at the receiving end of net neutrality rules. The internet is an ecosystem and, therefore, same rules should apply to all stakeholders including content providers, telecom service providers, device manufacturers and services subscription entities.

# 3.0 Mines Act - mandate clearance of Mining License by January 2017

The new Mines and Minerals (Development and Regulation) Amendment Act, 2015, has stipulated that all licences henceforth would be granted through only auctions by the respective state governments. However, if any company was issued a letter of intent by the state under the old law, the licence for that block should be granted by January 2017. If any mining proposal has been approved by a state government under the earlier law but got stuck with the Centre, the licence must be issued by January 2017.

# 4.0 Offshore mineral exploration to be commenced soon: Mines secretary

India would soon start offshore exploration of rare minerals and relevant rules would be in place in three months. About 50-60 blocks would be put on auction or would be allotted through a competitive bidding process. The blocks that have been identified are seven nautical miles from the coast.

# 5.0 LS clears the Enforcement of Security Interest and Recovery of Debt laws and Miscellaneous Provisions Bill, 2016

- RBI oversight of the asset reconstruction companies.
- Central registry to record details of all secured assets.

- Priority of debts due to secured creditors over all other debts and claims.
- Time for filing appeal to the Appellate Tribunal cut from 45 days to 30 days.
- 50% of debt to be deposited for filing an appeal; can be cut to 25% in some cases.
- Right to take over secured property; appointing receiver for such property and to sell the same.
- Time can be given to borrower if 25% debt deposited with promise to pay full.
- Depositories empowered to transfer asset to ARC.
- A fit and proper person can sponsor an ARC.
- Protection for secured creditor, RBI, central registry or any of their officers for action taken in good faith.

## 6.0 Loan recovery through agents unlawful: court

The Kerala High Court has taken strong exception to the practice of banks and financial institutions engaging agents to recover loans through strong arm tactics. This is not only unlawful but also unethical.

#### 'Not enforceable'

The practice is also opposed to public policy and against protection of public interest. Recovery of loans is enforced on the pretext that delivery of justice through court of law is a slow process.

"I have no hesitation to hold that agency created by the bank for realisation of loan dues....is an agreement opposed to the public policy and hence not enforceable," the judge ruled.

## 7.0 New Lending Rate system a boon for midsized banks

The Marginal Cost of Funds based Lending Rate (MCLR) system could become a tool for expanding business as it gives an opportunity to offer lower rates in short-term maturities, opening up a new market which was so far not within the reach of lenders.

The key difference between MCLR and the previous base rate regime is that the new rates are divided into different baskets corresponding

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# LATEST IN FINANCE / EDITORIAL



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#### GST - India on the Move

- Department and officials to administer manufacturers, traders, service providers-division between states and central Government. Even the Government machinery will need training and understanding of law clearly.
- Decision on
  - Tax free products and services,
  - "NIL" Tax products and services,
  - Low rate tax products and services,
  - Maximum ceiling tax rate Goods or Services
- Process to ensure that no large refunds or unadjusted credit remains with dealers e.g. with exporters, adversely impacting trade or commerce.
- Collection methodology from importers.
- Special tax zone like Jammu & Kashmir,

Uttaranchal, Assam and Eastern states, Himachal - existing continuing exemptions on "NIL" tax regime & other migration issue.

- Incentive mechanism for segments to be promoted.
- Tax on food items, housing, jewellery, education, health, legal services, regulatory and government services needs careful handling.
- Off books transactions and parallel economy will be a larger challenge.
- Tax rate on services has to be much lower than Goods to ensure growth of service sector, existing credits, procedures, processes, returns, registration, exemption threshold and so on.

We, Chartered Accountants will have a major role in GST's successful implementation and its effectiveness, efficiency and smooth functioning. We are ready to take on the major task ahead and support the Government as well as businesses in implementation, with minimum pain and teething troubles in initial 2 years & thereafter.

to bank deposits. So banks will have an overnight MCLR, a one-month rate, a three-month, six month and one year rate at which it can price its loans.

The only difference is that the loans have to be re-priced based on the deposit basket which they are linked to, unlike rates in the base rate which used to move when the bank used to change its rates.

# 8.0 Regulator can review power tariff in PPA

The tariff fixed in a Power Purchase Agreement (PPA) is not sacrosanct and it could be reviewed by the State Electricity Regulatory Commission, which is the statutory authority for fixing tariff under the Electricity Act, the Supreme Court ruled in its judgment, *Gujarat Urja Vikas Nigam Ltd vs Tarini Infrastructure Ltd*.

# 9.0 Sebi eases: Institutional Trading platform

- IT companies to qualify on this platform need Qualified Institutional Buyer (QIB) shareholding of at least 25 per cent; other companies need 50 per cent.
- Sebi has proposed to expand the definition of QIBs to investors such as NBFC, family trusts and individual foreign investors. Also, to do away with the 25 per cent cap on single

investors listed on the platform. NBFC and Trust to have net worth of atleast Rs. 500 crores.

• Further, it proposes to reduce the minimum institutional investor participation, from 75 per cent to 50 per cent. Also, to increase the ceiling on allotment to individual institutional investors from 10 per cent to 25 per cent to a single entity. Sebi has also proposed to make market making compulsory for a minimum of three years for an issue size of less than Rs 100 crore.

# 10.0 Demat a/c holders of NSDL, CDSL can trade in G-Secs on NDS-OM platform

The Reserve Bank of India (RBI) allowed demat account holders of NSDL and CDSL to put through trades in government securities (G-Secs) on the Negotiated Dealing System - Order Matching (NDS-OM) platform. The central bank added that the scheme seeks to facilitate efficient access to the retail individual investor to the same G-Sec market being used by the large institutional investor in a seamless manner.

# 11.0 Sustainable Structuring of Stressed Assets (S4A) Scheme

According to the scheme, banks can convert half the company's loans into equity/redeemable



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# **LATEST IN FINANCE / DIRECT TAXATION**

optionally convertible preference shares or optionally convertible debentures in the next 90 days. The rest will be serviced according to present terms and conditions.

# 12.0 India's largest spectrum auction to start from29 September, 2016

The government will put a total of 2,354.55 megahertz of mobile airwaves frequencies for auction all band -- 700 Mhz, 800 Mhz, 900 Mhz, 1800 Mhz, 2100 Mhz and 2300 Mhz. All the airwaves being put for auction can be used for high-speed 4G services. Bidding rounds for the country's biggest-ever spectrum auction will begin from September 29, in which mobile airwaves worth Rs. 5.63 lakh crore at the base price value will be put up for sale.

## 13.0 Sebi proposes valuation norms for InvITs

The Securities and Exchange Board of India (SEBI) has issued a consultation paper on financial disclosures and valuation of the units of the newly introduced Infrastructure Investment Trusts (InvITs).

# 14.0 LIC body to guarantee bonds of infrastructure companies

The government plans state-owned Life Insurance Corporation to join other state-run financial institutions to set up a new entity to provide credit enhancement to bonds issued by infrastructure companies, a move that can help them raise funds easily. The proposed new institution will help improve credit worthiness of bonds issued by infrastructure companies, making them more attractive to investors. Under the proposed structure, LIC will hold a majority stake in the firm while the rest will be held by two or three large state-run banks and financial institutions. Multilateral financial institutions may also be roped in at a later stage.

# 15.0 Centre approves Draft Real Estate Agreement Rules for UTs

The Ministry of Housing & Urban Poverty Alleviation has firmed up the Draft Agreement for Sale Rules, 2016 applicable for the five Union Territories of Chandigarh, Andaman & Nicobar Islands, Daman & Diu, Dadra and Nagar Haveli and Lakshadweep, an official statement said on Monday.

Under these Draft Rules, promoter is required to

clearly indicate the date of delivery of possession to the allottee in the Agreement itself. "However, there is a provision for extension of this date due to force majeure.

There shall be a clear mention in the Agreement of date of grant of commencement certificate, clear land title giving the area of project and Khasra numbers, number of stories and plots in the project, carpet area and common area, share of allottee in common area, total price etc.

# DIRECT TAXATION

## 1.0 No TDS by Overseas Banking Units

Tax is not required to be deducted on interest paid by IBUs, on deposit made on or after 1.4.2005 by a non resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

Circular No. 26/2016

# 2.0 Taxpayers get relief from recovery during pendency of stay

In a relief to tax payers, the government has asked taxmen not to proceed with recovery of a 'confirmed' demand in relation to indirect taxes during pendency of stay applications.

The CBEC issued a circular on 'Recovery of Confirmed Demand of Tax During the Pendency of Stay Application' in relation to indirect taxes.

Confirmed demand of tax arises, when after examining the submissions of a tax payer, an order is issued confirming demand of tax from a tax payer.

#### 3.0 Ban cash transactions above 3 lakh: SIT

The Supreme Court-appointed Special Investigation Team (SIT) on black money has called for a complete ban on cash transactions above Rs. 3 lakh as well as setting a Rs. 15-lakh cap on cash holdings by individuals.

It further said the government should frame a new law to make transactions above this threshold illegal if the amount is not paid by cheque, bank draft, or electronic clearing system through a bank account.

# 4.0 E-filing: ATM-based validation facility activated

The Income Tax department has launched an ATM-based validation system for filing e-ITRs

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# **DIRECT TAXATION**

# **INCOME DECLARATION SCHEME**

## **Income Declaration Scheme rule on old cases** clashes with I-T Act

A provision in the scheme allows the I-T department to go after evaders for undisclosed assets acquired well before six years. Today, tax officers, as per law, refrain from reopening assessment which are more than six years old.

"The IDS changes this as it empowers assessing officers to revisit old matters. It is against the Income-tax Act and settled nature of tax assessment," said a tax official in Mumbai. The IDS provisions even legally do not over power existing 6 years limitation and FAO issued in this regard is not maintenable as per jurisprudence.

## I-T dept identifies 90L non-PAN high-value deals sans PAN

The Income Tax department has identified 90 lakh high-value transactions carried out without quoting PAN, the Finance ministry said asking tax evaders to own up and come clean on such transactions.

- Tax and surcharge payable under section 184, and the penalty payable under section 185 in respect of undisclosed income can be paid:
  - 25% by 30th November, 2016
  - 25% by 31st March, 2017
  - 50% by 30th September, 2017

Notification No. 59/2016

- Declaration made under the Scheme can be revised upwards before the date of closure of the Scheme i.e. 30 September, 2016.
- The cases of the declarant shall not be selected for scrutiny under the CASS on the ground that there is increase in capital in the balance sheet as a result of the declaration made under the Scheme.
- Immunity to the directors or the partners, as the case may be, shall be available in respect of the undisclosed income declared under the Scheme by the company or partnership firm.
- A person having undisclosed income in the form of an investment in immovable property in the name of his spouse can declare the fair market value of the property in his own name if the funds for acquisition of the said property were provided by such person.

Circular No. 27/2016

by taxpayers as part of its measure to enhance the paperless regime of filing the annual IT returns.

"Now, Electronic Verification Code (EVC) can be generated by pre-validating your Automated Teller Machine (ATM) provided by the bank where a taxpayer has an account.

#### 5.0 Companies to get PAN, TAN within a day; paperless application starts

Companies can now obtain PAN or TAN registration within a day if they submit digital signature certificate based application, thereby ensuring ease of doing business, Income Tax department said today.

Besides, individuals can now get a new Permanent Account Number (PAN) through Aadhaar-based e-signature facility which will reduce the effective time in allotment.

#### 6.0 I-T scrutiny notices - 3 Categories

In a bid to end taxpayers' harassment, the Finance Ministry has "modified" the Income Tax department notice issued for the tedious scrutiny procedure by bringing in "three new formats" that will clearly stipulate if the inquiry against them is "limited, complete or manual".

#### Land intended to be used for commercial 7.0 purpose at time of sale can't be deemed as agricultural land

ITAT Bangalore bench held that capital gains addition in respect of sale of various lands held by assessee an individual engaged in buying/selling of immovable properties was to be upheld as land was converted from agricultural to nonagricultural prior to sale with sole purpose and intent to sell land for industrial purpose and period of holding was also very short; land in question did not fall under exclusion clause (iii) to section 2(14).

Deputy Commissioner of Income-tax, Circle 5 (1), Bangalore v. B. Sudhakar Pai. [2016] 71 taxmann.com

#### 8.0 Hedging loss suffered by assessee to be allowed as business loss.

ITAT Mumbai bench held that where assessee engaged in manufacture and export of processed food products, in order to safeguard itself against fluctuations in exchange rates of foreign currency, entered into foreign exchange forward contracts with banks against confirmed export



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# **DIRECT TAXATION / CORPORATE LAWS**

order, hedging loss suffered by assessee in respect of said forward contracts was to be allowed as business loss.

[2016] 71 taxmann.com 299

# 9.0 Sum paid to facilitate Call Centers to communicate with USA customers held as 'royalty'

ITAT Delhi bench held that where assessee US company provided Indian company a gateway that would facilitate communication from India to people of USA and vice versa and same was done through embedded secret software owned by assessee, payments received from Indian company was royalty.

[2016] 71 taxmann.com 258

# 10.0 Sec. 14A disallowance to be computed by considering only those shares which yielded dividend income during the year

ITAT Kolkata bench held that disallowance under rule 8D with respect to income not includible in total income has to be computed by taking into consideration only those shares, which has yielded dividend income in year under consideration.

[2016] 71 taxmann.com 276

# 11.0 Prepayment charges on home loans are deductible as 'interest' under Sec. 24(b)

ITAT Mumbai bench held that prepayment charges and processing fee made for purpose of availing loan at lower interest cost are allowable under section 24(b).

Peepul Tree Properties (P.) Ltd. v. Assistant Commissioner of Income tax. [2016] 71 taxmann.com 332

# 12.0 Lease equalization charge couldn't be added back in book profits for computing MAT liability

The High Court of Gujarat held that lease equalization charge is neither a reserve nor a deduction; said amount would not be part of net profit in computing book profit under section 115JA.

[2016] 71 taxmann.com 220

# 13.0 Excise and Customs duty on closing stock is deductible on payment basis as per sec. 43B

The High Court of Karnataka held that, in view of specific language of section 43B, amount of customs and excise duty on value of closing stock

should be allowed as deduction in assessment year relating to previous year in which it was actually paid even though assessment of closing stock of that year would be in subsequent assessment year.

[2016] 71 taxmann.com 211

# 14.0 Both employees and employer's contribution covered under Sec. 43B

The High Court of Patna held that there appears to be sufficient justification for taking the view that the employees' and the employer's contribution ought to be treated in the same manner.

Bihar State Warehousing Corporation Ltd. v. Commissioner of Income-tax 1, Patna. [2016] 71 taxmann.com 247

## **CORPORATE LAWS**

## 1.0 Partnership Act does not bar arbitration

Though arbitral proceedings have certain shades of civil suits, they are different in substance. Therefore, the bar on suits imposed in the Partnership Act in certain circumstances will not come in the way of taking disputes to arbitration, the Supreme Court has held in its judgment, Umesh Goel vs Himachal Coop Housing Society.

# 2.0 EPFO eases UAN norms for PF claims, withdrawal

Employees who left EPFO membership before January 1, 2014, now do not need to furnish their UAN for settlement of PF claims or withdrawal."Claim forms may be accepted without UAN if the date of leaving/exit of the member is before 01.01.2014," says a circular dated July 13, by the Employees Provident Fund Organisation (EPFO) sent to all zonal and regional offices.

# 3.0 SIT seeks action on duty drawback claims without exports

SIT appointed by Supreme Court has directed ED to take action under FEMA with respect to 216 companies with respect to the period before March 1, 2016 and 572 companies for the period after March 1, 2016, for which each such company had export proceeds pending for realisation for more than Rs 100 crore and also take action on such companies' with smaller dues.

## ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY



# CORPORATE LAWS/CAPITAL MARKET / INDIRECT TAXATION

# Centre to change law to regulate Uber and Ola

The Centre is planning to change the Motor Vehicles Act to empower state governments to regulate taxi aggregators like Uber and Ola. This will also allow states to cap fares and end surge pricing.

#### 5.0 Apex court directs Centre to provide 3% reservation in jobs to disabled persons

The Supreme Court has directed the government to give three per cent reservation to Persons With Disability (PWD) in all services, irrespective of the mode of filling such posts.

#### 6.0 **Employment of children below 14 - Banned**

The Child Labour (Prohibition and Regulation) Amendment Act, 2016 makes employment of children below 14 years as cognizable offence for employers and provides for penalty for parents.

#### 7.0 Firms taking public deposit must carry disclaimers

Companies seeking deposits from the public will now have to carry a disclaimer in their advertisements that the government does not take responsibility for the financial soundness of the schemes being floated. This has been introduced through amendments to the Companies Act.

#### 8.0 Plot owner in MoU can move to consumer forum

The owner of a plot who signs a Memorandum of Understanding (MoU) with a builder for raising multi-storeyed apartments is a 'consumer' and, therefore, can sue the builder for deficiency in service, the Supreme Court ruled in case of, overruling the National Consumer Commission and the Andhra Pradesh consumer commission.

## **CAPITAL MARKET**

## Ind AS: SEBI gives listed cos more time to file results

For the June 2016 quarter, Securities and Exchange Board of India (SEBI) has extended the deadline by one month, allowing companies to report results by September 14.

#### 2.0 Stricter transfer norms notified for P-Notes

To allay concerns over misuse of controversyridden P-Notes, regulator SEBI has notified new norms restricting transfer of these offshore instruments only to entities authorised for their use and that too after prior consent from the issuer foreign investor.

#### 3.0 Dividend distribution policy must for top 500 firms

Amid shareholder complaints about many companies refusing to pay dividend despite having extra cash, markets regulator Sebi has made it mandatory for the top 500 listed firms to have a 'dividend distribution policy'.

## INDIRECT TAXATION

## No denial of input credit just because date of invoice and date of credit fall in different periods

CESTAT, Mumbai Bench held that expression "net cenvat credit" in rule 5 of CENVAT Credit Rules, 2004 means credit "availed" during relevant quarter; hence, irrespective of date of invoice or date of receipt of inputs/services, refund of credit is allowed during period in which "date of taking credit" falls.

Decos Software Development (P.) Ltd. v. CCE [2016] 71 taxmann.com 293

## FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.78	0.66	0.63	0.62
SENSEX	27795.52	27707.42	25720.56	23766.80
NIFTY	8570.60	8491.65	7881.90	7221.40
CRR (%)	4	4	4	4
REPO (%)	6.50	6.50	6.50	6.75
REVERSE REPO (%)	6.00	6.00	6.00	5.75
Gold (per 10 gm)	31,359	31,564	29972	28199
Silver (per kg)	47,050	48,075	41273	36700
Crude (USD/bbl)	43.88	44.81	44.22	31.64
₹ vs USD	66.74	67.14	66.72	67.88
₹ vs Euro	74.38	74.11	75.96	76.65
₹ vs 100 Yen	65.84	65.89	61.35	59.21
₹ vs RMB	10.08	10.04	10.25	10.43
₹ vs Pound	87.04	86.91	96.11	98.29
MCX Aluminium (per kg)	109.55	110.45	105.55	101.70
MCX Copper (per kg)	321.45	322.05	315.05	306.50
*As on August 11, 2016	(Sources: MoneyControl, NSE, BSE, RBI, MCX)			

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# 2.0 Uploading of notice on DVAT website in account of assessee is valid service of notice: HC

The High Court of Delhi held that where Assessing Authority uploaded a notice being issued under section 59(2) on website of department in account of assessee directing it to furnish certain informations, in view of order dated 17-1-2014 being passed by Commissioner, in exercise of his powers under rule 62(1)(vi), which, inter alia, states that all notices or summons or orders shall be served upon dealer(s) by electronic means, there was proper service of above notice upon assessee.

Bajrang Fabrics (P.) Ltd. V. Commissioner of Value Added Tax. [2016] 70 taxmann.com 348 (Delhi).

# INTERNATIONAL TAXATION

# 1.0 MFN clause is an integral part of DTAA and self-operational; Delhi HC sets aside decision of AAR

The High Court of Delhi held that MFN clause of the Protocol, which forms part of the India-France DTAA, automatically becomes applicable. There is no requirement to have a separate notification incorporating the beneficial provisions of the DTAA between India and UK as forming part of the India- France DTAA. Steria (India) Ltd. v. Commissioner of Income-tax-VI. [2016] 72 taxmann.com 1 (Delhi).



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