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## BANKING SECTOR- LOOKING FOR GROWTH CATALYST, STRATEGY, MONITORING NEED

## EDITORIAL



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

The banking sector has passed through a turmoil during last few years of UPA II and the Indiscrete lending without adequate due diligence, non adherence to financial management principles, excessive leveraging, diversion of funds and lust for too fast growth has brought to us now a very serious situation as would be clear from the following facts -

Particulars	2013-14	2014-15	2015-16
Credit Growth (in %)	15%	7%	2%
Gross NPA (in %)	4.40%	5.10%	9.80%
Return on Equity (%)	9%	7%	-3%
Provision of NPA	0.2	0.2	0.95
Advances	49.29	52.92	53.99
Gross NPA	2.18	2.69	5.27
Net NPA	1.25	1.55	3.13
Deposit	63.80	69.71	72.41
CASA	19.79	21.59	22.98
Capital Employed	4.51	4.85	5.19

The growth of banking sector and their sustained existence has become a matter of very serious concern for last 2 years. The banks are now flush with funds due to demonetisation and lack of credit growth and still are not able to lend, in the absence of visionary management, lack of proposals, big hesitation in banking sector to further lend even to good proposals.

The fear of CBI and vigilance regarding backdrop of large NPA's are dissuading bankers to take pragmatic decisions inspite of very significant positive structural change and basic policy changes. Supporting a growth scenario, the promoters are not coming forward to take on expansions or diversification, specially in manufacturing sector. The

lack of risk capital inflow in the absence of credibility of capital market is another big damper.

A major reform strategy is needed in public private partnership to bring out new investment, where the equity support is provided by the Government, Central and State PSU's, banks and investment pulling vehicles.

The real sustained growth will come by regular application of basic financial management principles, transparency, ethics and real corporate governance. The government and RBI need to beef up regulatory and monitoring systems and need not micro-manage the affair of banks. The Equity (Risk) Capital needs to be channelized into new and expansive units bringing cost of the funds substantially down.

The Gross NPA and Net NPA both are very large. A significant portion, 70% of these asset is locked into large borrowed 5000 crores or more as a group. The regulatory mechanism of RBI and functional control as well as administrative mechanism of individual banks has failed miserably. Even private sector banks have suffered deep NPA losses.

The Banking Sector is backbone of Indian economy and for sustained growth of manufacturing, services, agricultural as well as to achieve Make in India, a vibrant and strong Banking Sector is a must. The role of catalyst is to be played by top financial experts to check out a clear strategy for revival of all borrowing entities by bringing their debt levels to sustainable level.

The following suggestions may be considered by Bank Sector:-

- Construction of Special Task Force in all banks
- Purchase of all such assets in a separate pool by bank for further disposal- as a trustee
- Restructuring of Advances
- Options to management to pay optionally convertible debenture over 8 years after 2 year moratorium.
- Separate Bad Bank- may be reconsidered as it may be too difficult by one entity to manage so much.
- Independent Bank Directors
- Recapitalization of Small Banks needed for growth

**LATEST IN FINANCE****1.0 Govt to give Rs 10,000-cr incentive to electronic manufacturers**

The Cabinet amended the Modified Special Incentive Package Scheme (M-SIPS) to boost electronic manufacturing. Under the amended rules, companies that invest in manufacturing would get up to Rs 10,000 crore as incentives. New investment proposals would be accepted till December 31, 2018.

M-SIPS provides a subsidy for capital expenditure - 20 per cent for investments in Special Economic Zones (SEZs) and 25 per cent in non-SEZs. Under the amended rules, companies will receive incentives within five years from the date of approval to ensure time-bound delivery, now eligible proposals will be approved within 120 days of their complete submission. The units receiving incentives under the scheme will have to provide an undertaking to remain in commercial production for at least 3 years.

**2.0 India Post gets payments bank licence to start services**

India Post has received payments bank licence from Reserve Bank of India to start roll-out of banking operations commercially under the permit.

**3.0 Supreme Court permit TV tariff to be fixed**

The Supreme Court permitted the Telecom Regulatory Authority of India (TRAI) to go ahead with draft tariff order and interconnect regulations to fix television prices for the Rs 54,220-crore Indian television industry.

A bench led by Justice PC Gosh modified the Madras HC's status quo order of December 23 that essentially froze the Trai's powers to fix television prices. However, it said the final regulations/tariff orders shall be submitted to the apex court.

**DIRECT TAXATION****1.0 Measures for reducing litigation – Clarification on Circulars 21/2015 and 8/2016 reg.**

It is, therefore, clarified that the import and intent of para 8 of the Circular No. 21/2015 is that even

on the issues mentioned in the said para, appeals against the adverse judgement should only be filed on merits. Appeals that may have been filed in violation of these instructions may be withdrawn.

*Circular No. 5/2017*

**2.0 Sec. 80P relief available to Co-operative credit society providing credit facilities only to its members**

The High Court of Madras held that where assessee co-operative credit society was providing credit facilities to its members alone and not to general public at large and it also did not receive monies by way of deposit from general public, it could not be termed as co-operative bank

*Commissioner of Income-tax, Coimbatore v. Nilgiris Co-operative Marketing Society Ltd.\* [2017] 77 taxmann.com 23 (Madras)*

**3.0 CBDT notifies protocol between India and Cyprus**

Central Government has notified that all the provisions of the agreement between the Government of India and Government of Cyprus for the avoidance of double taxation and the prevention of Fiscal evasion w.r.t taxes on income, shall be given effect from April 1, 2017.

**4.0 Handy Tips for the Salaried Class**

- Get all necessary documents together, as your HR department could ask for proof of tax benefits availed under section 80C, HRA, LTA, and interest paid on home loan anytime.
- A new Form 12BB has to be filled and all necessary documents provided with it.

**5.0 Clarification on implementation of GAAR**

CBDT has issued provision on General Anti Avoidance Rule (GAAR) that shall be effective from AY 2018-19 onwards i.e. FY 2017-18 onwards. The necessary procedures for application of GAAR and condition, under which it shall not apply have been enumerated in Rules 10U and 10UC of the Income Tax Rules, 1962

**6.0 Loan to HUF is deemed dividend when shareholder-Karta has substantial interest in HUF: Apex Court**

The Supreme Court of India held that even if



HUF is not a registered shareholder in lending company, advances/loans received by HUF is taxable as deemed dividend under section 2(22)(e) if Karta-shareholder has substantial interest in HUF

*Gopal And Sons (HUF) v. Commissioner of Income-tax, Kolkata-XI\*1 [2017] 77 taxmann.com 71 (SC)*

### 7.0 Procedure for registration and submission of Statement of Financial Transactions(SFT) i.e FORM 61A

Section 285BA of the income tax act, 1961 read with rule 114E of the income tax rules, 1962 specifies that SFT required to be furnished in FORM 61A. The nature and value of transactions to be furnished by the reporting person are mentioned under rule 114E. Steps involved for submitting FORM 61A-

- Registration and Generation of Income Tax Department Registered Entity Identification Number (ITDREIN)
- Registration of designated director and principal officer
- Submission of FORM -61A
- Submission of correction statement

### 8.0 Income derived from flowers and petals grown in plots held as agricultural income

The High Court of Madras held that where assessee, a landscaping architect, declared income derived from flowers and petals grown in plots as agricultural income and produced details of expenditure incurred in this regard, said income was agricultural income and was exempted under section 10(1)

*Commissioner of Income-tax, Chennai v. K.N. Pannirselvam\* [2017] 77 taxmann.com 24 (Madras)*

### 9.0 Sec. 44BBB not applicable to assessee engaged in consultancy services for construction projects

The In The Itat Delhi Bench 'G' held that section 44BBB which deals with turnkey project, not applicable to assessee being engaged in providing consultancy services

*SMEC International (P.) Ltd. v. ADIT, International Taxation, Range-2, New Delhi\* [2017] 77 taxmann.com 4 (Delhi - Trib.)*

## BANKING

### 1.0 Prohibition on Indian Party from making direct investment in countries identified by the FATF as "Non Co-operative countries and territories"

It has been decided to prohibit an Indian Party from making direct investment in an overseas entity (set up or acquired abroad directly as JV/ WOS or indirectly as step down subsidiary) located in the countries identified by the Financial Action Task Force (FATF) as "Non co-operative countries and territories" as per list available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank of India from time to time.

## CORPORATE LAW

### 1.0 Deadline for termination of old BITs not to be extended

The Government will stick to the deadline of the April 1, 2017, for terminating all bilateral investment treaties (BITs).

### 2.0 CCI Nod to MakeMyTrip, Ibibo group merger

The Competition Commission of India has approved the proposed merger of online travel firm MakeMyTrip's Indian travel business with rival Ibibo group, owned by South African media conglomerate Naspers.

### 3.0 FSSAI brings direct selling firms, agents under its ambit

All food business operators will need to take relevant FSSAI licenses, to be updated on a quarterly basis, along with details and identities of the sales force. Companies will need to take undertakings of their agents and be liable to sampling and checks by the authorities.

### 4.0 Case Study - Insolvency

- NCLT admits insolvency filed by UB Engineering Ltd
- This is the first such case the NCLT has admitted
- Following the decision, UB Holdings, which owned about 37% loses control over the affairs of UBEL
- Failing resolution, the company will go in for liquidation
- Though UBEL is a listed company, the stock has been suspended from BSE for penal reasons





## Residence test for companies- POEM Guidelines

Section 6(3) of the Act were amended vide Finance Act, 2015, with effect from 1st April, 2016 to provide that a company is said to be resident in India in any previous year, if-

- It is an Indian company; or
- Its place of effective management in that year is in India.

A company shall be said to be engaged in “active business outside India” if the passive income is not more than 50% of its total income; and

- Less than 50% of its total assets are situated in India; and
- Less than 50% of total number of employees are situated in India or are resident in India; and
- The payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

“Passive income” of a company shall be aggregate of, -

- Income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and
- Income by way of royalty, dividend, capital gains, interest or rental income;

However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

“Senior Management” in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and may include Managing Director/CEO, Director of Finance/CFO, COO, Sales head, Technology or Production head.

The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India unless the Board of directors of the company are standing aside and not exercising their powers of

management. For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into account.

In cases of companies other than those that are engaged in active business outside India:-

- First stage would be identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company’s business as a whole.
- Second stage would be determination of place where these decisions are in fact being made.

Some of the guiding principles:-

- The location where a company’s Board regularly meets and makes decisions.
- If a board has de facto delegated the authority, place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.
- The location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval
- The location of a company’s head office.
- The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company’s place of effective management.
- It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM.

If the above factors do not lead to clear identification of POEM then the following secondary factors can be considered:-

- o Place where main and substantial activity of the company is carried out; or
- o Place where the accounting records of the company are kept.

Determination of POEM is to be based on all relevant facts. POEM shall be presumed to be in India if it has been mainly /predominantly in India.



## Pradhan Mantri Garib Kalyan Yojana (PMGKY-2016)

### 1. Clarifications on the Taxation and Investment Regime for PMGKY, 2016

- The undisclosed income deposited in the accounts with Post Office/Banks can be declared under the Scheme.
- The Scheme is not available for declaration of an income which is represented in the form of assets like jewellery, stock or immovable property.
- Deposits made by any mode such as cash, cheque, RTGS, NEFT, or any electronic transfer systems are eligible.
- Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year, even such person be eligible for making a declaration under the Scheme.
- Even a person against whom a search/ survey operation has been initiated can file declaration under the Scheme. The cash seized and deposit with Bank/Financial Institution during search operation can be declared under the scheme in the form of cash or deposit in an account maintained by specified entity.
- No credit for advance tax paid, TDS or TCS shall be allowed under the Scheme.
- Undisclosed income represented in the form of deposits in foreign bank account is not eligible for the scheme.
- Deposits made in bank account prior to financial year 2016-17 can also be declared under the Scheme.
- Undisclosed deposits between 01.04.2016 to 15.12.2016 shall also attract tax at the rate

provided in the Taxation Laws (Second Amendment) Act, 2016.

- Undisclosed income deposited/repaid in an Overdraft Account or Cash Credit Account or any loan account maintained with a bank is eligible for being declared under the Scheme.
- The adjustment of cash seized by the Department and deposited in the Public Deposit Account may be allowed to be adjusted for making payment of tax, surcharge and penalty under the Scheme on the request of the person from whom the cash is seized. However, the said amount shall not be allowed to be adjusted for making deposits under the Pradhan Mantri Garib Kalyan Deposit Scheme.
- Cash deposited in third party account can also be declared under the scheme.

Brownfield (100%) - Automatic upto 74%,  
Government route beyond 74%

### Explanatory Notes on- PMGKY, 2016

- A declaration under the aforesaid Scheme may be made in respect of any income in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017.
- No deduction in respect of any expenditure or allowance or set-off any loss.
- 30% Tax, 33% of tax as surcharge, 10% of undisclosed income penalty & 25% of undisclosed income as 4 year interest free deposit under the scheme.

- UBEL has classified term loans, cash credits and other facilities availed from banks as 'other current liabilities', which at the end of the FY16 stood at Rs. 434.9 crore

### 5.0 Norms Relaxed for Ease of Doing Biz at GIFT City, India

The two notifications, for private and public companies, have been issued by MCA under Section 462 of the Act.

The companies in IFSC have also been given administrative flexibility regarding filing of returns,

forms, board reports, holding shareholder meetings, structure of holding company and key managerial personnel. General and board meeting rules have been relaxed and boards can pass certain resolutions through circular resolutions, without physical presence.

Restrictions regarding voting on related party transactions have also been relaxed. Also from internal audit requirements, on certain conditions. Public companies at IFSC have been exempted from appointment of a woman as director and of independent directors.



### 6.0 NCLT allows compounding of offence on failure of company to follow Accounting Standard

The National Company Law Tribunal, Hyderabad Bench held that where company did not follow accounting standards in preparation of annual account as stated in Director's Responsibility statement, hence, violated provision of section 217, on company's application, compounding was to be allowed subject to payment of compounding fees.

[2017] 77 taxmann.com 270 (NCLT - Hyd.)

### 7.0 NCLT doesn't have powers to grant exemption from holding meeting wherein M&A Scheme to be considered

The National Company Law Tribunal, New Delhi Bench held that in compromise and arrangement Tribunal is not empowered to dispense meeting of shareholders/members; but it may dispense with calling of meeting of creditors against affidavit of creditors having 90 per cent value

## INDIRECT TAXATION

### 1.0 Importers worried over service tax on ocean freight

Notification dated 12th January by Revenue Department, import ocean freight and ancillary charges would be subject to a service tax at the rate of 4.5 per cent.

### 2.0 GST Council plans three-rate service tax structure

Just as for goods, the goods and services tax (GST) Council is planning to bring different rates of tax for services as well. The highest rate would be for "luxury" services.

### 3.0 Dubai Imposes 5% Import Duty on Gold Jewellery

Dubai has imposed a 5% import duty on gold and diamond jewellery

### 4.0 AO couldn't reopen VAT cases merely on basis of subsequent decision of Apex Court

The High Court Of Patna held that where Assessing Officer framed original assessment of assessee dealing in mobile phones under section 31 or section 33 and subsequently he on basis of

a judgment of SC issued on assessee a notice under section 31 seeking to reopen his assessment, issuance of notice would amount to change of opinion

*Samsung India Electronics (P.) Ltd. v. State of Bihar\**  
[2017] 77 taxmann.com 217

### 5.0 GST- Administrative Control

The Centre and the states reached consensus on a number of contentious issues during the GST Council meeting. The entire tax base would be shared between the Centre and States in a predetermined ratio. The Centre agreed the States would have the powers to administer 90 per cent of assesseees with an annual turnover of up to Rs 1.5 crore. The Centre will have the powers to audit, send notices and scrutinise the remaining 10 per cent. Only West Bengal did not agree and said that this agreement pertained to services only.

Assesseees with a turnover over Rs 1.5 crore will be administratively controlled by the Centre and States in equal measure. However, no assessee would be controlled by two authorities and there would be computer-based enforcement at both the Centre and the States. Those assesseees who fall under the integrated GST (IGST) - for the movement of goods and services between states - will also be administered by the Centre and States, depending on their annual turnover (Rs 1.5 crore, or more).

### 6.0 Service Tax on tour operators has been doubled

There was confusion whether tour and hotel aggregators pay service tax on commission charged or entire amount paid by customers

- CBEC amends service tax rules to clarify the tax will be on entire amount, if customer directly pays to these aggregators
- If customer pays only commission to aggregators and other charges to hotel, tax liability on aggregators will be on commission only
- Currently, customer pays entire amount to aggregators because they give discounts
- International players out of service tax net
- Service tax is payable at 6-15%, depending on the kind of services provided by aggregators
- Rules effective from January 22. Aggregators have started charging more to accommodate for service tax



### 7.0 Entry tax can be adjusted against sales tax under Tamil Nadu VAT; SLP dismissed

The Supreme Court of India held that where assessee imported automobiles from outside Tamil Nadu State and on purchase value of goods paid entry tax at rate of 13 per cent under Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 and also paid sales tax on said goods at rate of 12 per cent under Tamil Nadu General Sales Tax Act, 1959 and High Court held that assessee would be entitled to adjustment of sales tax paid to extent of entry tax paid, SLP was to be dismissed on ground of delay

*Commercial Tax Officer v. Coimbatore Auto Garage (P.) Ltd.\* [2017] 77 taxmann.com 70 (SC)*

### 8.0 No luxury tax on sale of luxury items subject to DVAT: Delhi HC

The High Court of Delhi held that rule 3(2)(b)(ii) of the Delhi Tax on Luxury Rules, 1996 Mandating Banquet Hall Owners to include entire value of turnover to determine Luxury Tax regardless of whether substantial part or whole of it is subjected to VAT levy is ultra vires

*Community Welfare Banquet Association v. Govt. of NCT of Delhi\* [2017] 77 taxmann.com 45 (Delhi)*

### 9.0 Amended definition of consideration under service-tax has prospective effect

The Cestat, New Delhi Bench held that Reimbursable expenses collected by services provider from service recipient could not be held to be a part of value of services being provided by services provider and same could not be subjected to service tax

*Fortune Park Hotels Ltd. v. Commissioner of Service Tax Delhi\* [2017] 77 taxmann.com 183*

### 10.0 Trade discount is deductible under VAT even if it is given subsequent to sale via credit note: SC

The Supreme Court of India held that trade discounts affectuated subsequent to original sale but evidenced by contemporaneous documents and reflected in relevant accounts are allowable.

*Southern Motors v. State of Karnataka [2017] 77 taxmann.com 251 (SC)*

### 11.0 Customs dept. can't detain imported goods in guise of seizure: Delhi HC

The High Court Of Delhi held that in case, Customs Department does not issue show-cause notice under section 124(a) within six months or within extended period of six months from seizure, goods have to be released to person from whom they have been seized; Custom Department cannot take shelter under device of detention of goods in order to avoid consequences flowing from seizure of goods

*Jatinder Kumar Sachdeva v. Union of India\* [2017] 77 taxmann.com 50*

## CAPITAL MARKET / FEMA

### 1.0 SEBI tightens unlisted firms' M&A rules

New conditions for unlisted- listed mergers:-

- A merged entity should have at least 25% public shareholding
- Must be listed on NSE, BSE, or an exchange with nationwide terminals
- Sebi pricing formula will apply
- Compulsory e-voting if a substantial part of listed firms gets transferred into unlisted
- Compulsory e-voting if shares of unlisted firms are being acquired by promoters

## FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.99	0.95	0.88	0.87
SENSEX	28351.62	27214.14	26515.24	26912.39
NIFTY	8805.05	8395.70	8170.80	8321.25
CRR (%)	4	4	4	4
REPO (%)	6.25	6.25	6.25	6.25
REVERSE REPO (%)	5.75	5.75	5.75	5.75
Gold (per 10 gm)	29152	28317	27477	29733
Silver (per kg)	42696	40774	41119	43770
Crude (USD/bbl)	53.08	52.24	47.69	45.96
₹ vs USD	66.96	68.24	67.58	67.03
₹ vs Euro	71.17	72.41	71.76	73.12
₹ vs 100 Yen	58.89	59.32	59.06	62.94
₹ vs RMB	9.74	9.90	9.75	9.86
₹ vs Pound	83.76	83.01	85.13	84.18
MCX Aluminium (per kg)	125.40	121.40	117.75	118.25
MCX Copper (per kg)	411.70	400.10	392.50	377.90

\*As on February 11, 2017

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



## Quick Updates

### 2.0 SEBI notifies rules for direct trade by FPIs in corporate bonds

With an aim to deepen the capital market, regulator Sebi has notified guidelines permitting well-regulated foreign portfolio investors (FPIs) to trade directly in corporate bonds without any broker.

Currently, FPIs can trade in Indian markets only through brokers who are registered with stock exchanges as their members.

### 3.0 SEBI has established its own Investor Protection and Education Fund

SEBI has decided that any proceeds due to sale of security under disinvestment and any receipts in the form of securities arising out of shares written off shall be credited net off expenses to Investor Protection and Education Fund

- **AO couldn't make re-assessment for unexplained investment merely on basis of roving enquiry**
- **Payment made for supply of Software embedded in mobile phones couldn't be taxed as royalty**
- **Assessee has option to choose initial assessment year for Sec 80IA relief**
- **Fraud related issues couldn't be decided by NCLT in a petition filed for rectification of register**
- **Stakeholders have to compulsory file Form 3 within 30 days of incorporation for initial agreement and changes with regard to LLP , before filing of Form 8 and Form 11**

### GST

- Transitional Phase Implementation
- IT System Integration
- Business Advisory Services
- Pre Implementation Guidance
- Input Credit Planning & Management



### Compliances

- Preparation of Return
- Maintenance of Records
- Business Advisory Compliances



- Departmental Audit
- Preventive Audit
- Compliance Audit

### Audit



- Business Operating Procedures
- Automation
- Reconciliation
- Planning

### System Designing



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