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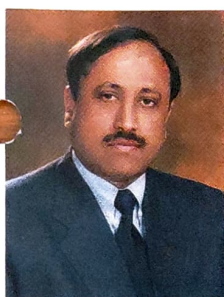
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EDITORIAL VINOD JAIN*

BUDGET – 2005 : HAMPERING BHARAT NIRMAN



The President of India Shri APJ Abdul Kalam while addressing the Budget Session in Parliament announced a commitment on behalf of UPA Government for a

business plan of Bharat Nirman. The commitment was duly elaborated in the Budget Speech of the Hon'ble Finance Minister. The Bharat Nirman Agenda encompasses on a commitment of around 7%-8% growth of the economy, a concentration on rural agriculture and inclusive growth. The specific targets include assured irrigation of additional 1 crore hectare, additional 3 crore employment generation, electrification of all villages, roads connecting all villages and water supply to all Indian inhabitation. The agenda is fairly ambitious and highly appreciated.

The Budget, however, fails to outline any specific direction, concrete programs and above all the allocation of necessary resources. On a review of the budget financials it is seen that the plan capital expenditure for 2005-2006 is proposed to be reduced by more than 42.3% and will be pegged only at Rs. 27,515 crores. The revenue expenditure has increased very significantly to a level of Rs. 4,46,512 crores. Revenue deficit as well as fiscal deficit not only have gone up significantly in 2004-2005 but are also projected to go up further. In spite of fiscal deficit of Rs. 1,51,144 cores, the expenditure on growth including capital expenditure is fairly limited. The allocation towards highways is a meagre Rs. 9320 crore as compared to the collection

of about Rs. 19,684 crores from cess and surcharge on petrol and diesel. The domestic as well as international debt is growing at a fast pace. The financial position of Government of India seems to be precarious primarily due to lack of financial discipline, control and monitoring. The modern double entry accounting methodology and Accounting Standards are not being followed by the Government. Most of the expenditure is not subjected to a detailed independent audit. The Government need to make a commitment to substantially reduce the expenditure and the deficit.

The tax collections are growing very significantly and for the first time have become a double digit i.e. about 10.5% of the gross domestic product. The hunger of the Government to levy more and more taxes is increasing, which is clear from levy of additional taxes, increase in surcharge and various other amendments brought in the budget. The Government needs to concentrate on a lean-thin, efficient and effective structure by substantially reducing its revenue expenditure. The concentration on widening the tax base is endless and is adversely impacting growth.

The proposed EET system of taxation will dissuade investment. This cannot and should not apply on existing investments, LIC policies and other funds like PPF/PF having long term commitment

The proposal to levy banking cash withdrawal tax @ 0.1% for cash withdrawals in excess of Rs. 10,000/- on per day basis has been wrongly described as a tax anti avoidance measure. This is going to hurt the agriculturists, farmers, honest taxpayers, small and medium enterprises, medical expenses, marriage expenses and all other genuine expenses

including salaries payment to workers etc. This is a completely mis-directed move and should be opposed strongly. Information for large cash transactions involving sources and enduse of black money can always be tracked with improved information network of the Government, if there is a genuine will and commitment. In any event why brand all the citizens of this great nation as squanderer or launderers.

The proposed imposition of Fringe Benefit Tax flat rate @ 33.6% on various

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ECONOMIC FACTS

	2003-04	2004-05
• GDP Growth	8.5	6.9
• Agriculture Growth	9.6	1.1
• Industrial Growth	6.6	7.8
• Services	9.1	8.9

BUDGET AT A GLANCE

	2004-05	2005-06
(Rs/Crore)		
• Revenue Receipt	300904	351200
• Capital Receipt	204887	163144
Total	505791	514344
• Revenue Expenditure	386069	446512
• Capital Expenditure		
Plan	47714	27515
Non Plan	72008	40317
Total	119722	67832

Capital Expenditure on Plan reduced by 42.3%

INDIVIDUAL INCOME TAX

- Basic Exemption limit raised to Rs. 1,00,000/- from Rs. 50,000/-
- Special Exemption limit for: Woman – Rs. 1.25 Lakh Senior Citizens – Rs. 1.50 Lakh

- Tax slabs changed:
- Upto Rs. 1 Lakh NIL
- Rs. 1 Lakh to Rs. 1.5 Lakh 10%
- Rs. 1.5 Lakh to Rs. 2.5 Lakh 20%
- Above Rs. 2.5 Lakh 30%
- Surcharge above Rs. 10 Lakh @ 10%
- Education Cess 2%

- Section 80 L - Deduction of Bank Interest withdrawn

- Standard Deduction on Salary Withdrawn

- Section 88, 88B, 88C Rebates withdrawn

- Section 80 E - Full Interest paid on loans for borrowing for Higher Education allowed as a deduction.
- Earlier limited to Rs.40,000/- for Interest & Principal
- Principal not allowed henceforth

- Section 80 C - Introduced Consolidated Deduction upto Rs 1 Lakh from taxable Income for amount invested/ spent on out of income chargeable to tax on:

- Life Insurance
- Annuity
- PF/ PPF/ Superannuation Fund
- National Saving Certificate, Notified Deposit/Securities
- ULIP
- Notified Mutual Fund Units
- Pension Fund
- Housing Finance Company
- Tuition Fee
- University, College or Other Indian Educational Institutions
- Full Time Education upto 2 children (No separate limit)
- Houses – Purchase or Construction:
- Installments to development authorities, housing boards;
- Part payment to Co-op Societies/ Companies by Members;
- Repayment of Borrowing, Govt, Bank, LIC, NHB, Housing Finance Co, Employer, Co-op. Society;
- Stamp Duty for House Registration;
- Subscription of Eligible Issue of Equity of Sec. 80 IA (4) Companies.

PARTNERSHIP FIRMS

Tax Rate Reduced	35% to 30%
Surcharge Increased	2.5% to 10%
Education Cess	2%
Mandatory income tax return for all firms	

CORPORATES TAX

➤ Domestic Companies

	Proposed %	Existing %
- Corporate tax	30	35
- Surcharge	10	2.5
- Education cess	2	2
- Total corporate tax	33.66	36.59
- Dividend Distribution Tax (inc. surcharge & cess)	14.03	13.07

- Effective Corporate tax*	42.03	43.17
- MAT (including surcharge & cess)	8.41	7.84

MAT credit allowed to be carried forward for four years.

➤ Foreign Companies

	Proposed %	Existing %
- Corporate tax	40	40
- Surcharge	2.5	2.5
- Education cess	2	2
- Total corporate tax*	41.82	41.82
- MAT (including surcharge & cess)	7.84	7.84

* Based on 90% distribution.

DEPRECIATION RATES

Depreciation rates for all business/ profession reduced from:

- Plant & Machinery 25% to 15%
- Cars 20% to 15%
- Furniture & Fixtures 15% to 10%
- Goods Transport Vehicle (On Hire) 40% to 30%
- Computers, Software 60% contd.
- Certain special machines 100% to 80%
- Manufacturing entities entitled to 20% initial depreciation in place of 15% –
- No requirement of capacity expansion.
- Don't apply to service sector, trading, processing business

GENERAL CHANGES

- TDS on Royalty reduced from 20% to 10% for agreements after 01.06.2005.
- Special Economic Zone - Tax free status only if unit starts before 31.03.2009.
- J & K Tax Exempt Units set up date extended to 31.03.2007 from 31.03.2005.
- Trading in Derivatives will not be treated as Speculative Business.
- Speculative Losses to be carried forward only for 4 years.
- TDS Certificates to be continued for another one year.
- No TDS from Individual truck sub-contractor owning upto 2 Carriage.
- Merger of Banks facilitated.
- Zero Coupon Bonds of Infrastructure Companies to be taxed as Capital Gain - No TDS.

- Compulsory filing of Return (1/6th Scheme) –
 - Mobile phone withdrawn;
 - Electricity expenses > Rs. 50,000/- P.A included.
- Speculative Losses to be carried forward only for 4 years.

FRINGE BENEFIT TAX (FBT)

- Applicable to all employers :
 - Individual/HUF engaged in business profession;
 - Company;
 - Firm;
 - Association of persons;
 - Local Authorities;
 - Artificial judicial person;
- Charging Section
 - Additional Income Tax;
 - Rate – 30% plus 10% surcharge plus 2% education cess;
 - Employer having at least 1 employee;
 - Tax on fringe benefits –
 - Provided;
 - Deemed to be provided.

FBT - Eligibility

- On all employers;
- Including those incurring losses or whose income is otherwise not taxable;
- Separate Quarterly Advance Tax;
- Separate Return;
- Separate Assessment;

WHAT IS FRINGE BENEFIT?

1. Benefit Provided:
 - Any privilege
 - Service
 - Facility
 - Amenity

Provided by the employer directly or indirectly to the employee past employees
2. Reimbursements:
 - Directly or indirectly;
 - Made by the employer to employee;
 - For any purpose.
3. Concessional or free ticket to employees or their families.
4. Contribution to superannuation fund:
 - Perks taxable in the hands of employee excluded.
 - To and fro residence – office transport excluded.

DEEMED FRINGE BENEFIT TAX

- Fringe benefit deemed to be provided include:
 - Expenses incurred or payment made by the employer:
 - In the course of business/profession;
 - Any activity whether for object of income, profit or not.
 - No linkage to employees necessary.
- Deemed Benefit to employees on following:

Nature of Expenses	Deemed Fringe Benefit Tax
• Entertainment	50%
• Festival celebrations	50%
• Gifts	50%
• Use of Club facilities	50%
• Provision of hospitality	50%
• Guest House	50%
• Conference etc.	50%
• Employee Welfare	50%
• Health Club etc	50%
• Sales Promotion and Publicity	50%
• Conveyance, Tour & Travels	20%
• Hotel, Boarding and Lodging	20%
• Repair, Running and Maintenance of motor cars	20%
• Repair, running and maintenance of Aircrafts	20%
• Consumption of fuel other than Industrial fuel	20%
• Use of Telephone	10%
• Scholarship to the children of the employees	100%

- The above percentage has been reduced to 5% in certain cases related to above mentioned item No. E, M & N and O.

FBT - Issues

- Expenses of Indian companies on foreign PE also may be taxed.
- Expenses booked in foreign country on employees in India will escape this tax.
- Whether foreign companies are eligible for tax credit in their home jurisdiction?

BANKING CASH TRANSACTION TAX

- Tax @ 0.1% on:
 - Cash Withdrawal of more than Rs.10,000 per day.
 - Bank Draft purchased in Cash > Rs.10,000 per day.
 - Term Deposit encashed > Rs.10,000 per day.

SECURITIES TRANSACTION TAX

The Following changes in Tax Rules are proposed:

Transaction	Current Rate (Percentage)	Proposed Rate (Percentage)
• Delivery Based	0.075	0.10
• Non-Delivery based	0.015	0.020
• Derivatives	0.01	0.0133
• Sale of units of equity oriented Mutual Fund	0.15	0.20

SERVICE TAX

- Tax Rate continued at 10% + 2% Education Cess.
- Small Service provider upto Rs.4 Lakh value of taxable services exempted – except branded services (provided by licensees).
- Service Tax to be paid by 5th of Next Month:
 - Corporates – Monthly
 - Other Assessee – Quarterly
- Scope of Services definition widened:
 - Authorised Service Stations;
 - Mutual Fund agents covers;
 - Broad Casting Services;
 - Beauty Parlour;
 - Business Auxiliary Services;
 - Erection, Commissioning and Installation;
 - Repair on Maintenance Services;
 - Manpower Recruitment Services;
 - Sound Recording;
 - Construction Services (Goods also Included);
 - Franchise Services;
 - Outdoor Catering Services.
- New Services
 - Cleaning Services;
 - Club and Association;
 - Construction of Residential Complexes;
 - Dredging;
 - Mailing List, Compilation and Mailing;
 - Packing Services;
 - Site Services;
 - Map Services;
 - Transport of Goods through Pipeline.
- Services rendered against payment received in foreign exchange – exemption from service tax withdrawn.



➤ Export of Services

- Exempted fully from Service Tax;
- Services in relation to immovable property situated outside India;
- Service partly or wholly rendered outside India – 47 services;
- Government to notify conditions/procedures for:
 - Rebate of tax paid on services exported;
 - Rebate of input service tax;
 - Rebate on tax paid goods used.
- Services, where recipient is located outside India
 - 26 services;
 - if the recipient has a PE in India;
 - Order should be received from abroad;
 - Services to be delivered abroad;
 - Payment is received in foreign exchange.

➤ Import of Services

- Foreign service provider:
 - Business outside India;
 - PE outside India;
 - Permanent address outside India;
 - Usual place of residence outside India.

- Service provided to person having:
 - Fixed establishment;
 - Permanent address;
 - Place of business;
 - Usual place of residence in India.
- Deemed to be taxable services.

➤ Other Changes:

- Advance received also taxable at the time of receipt.
- Advance ruling for Non – Residents.

CUSTOMS

- Peak rate reduced to 15%.
- Information Technology Products get NIL Custom Duty.
- 4% C.V.D on select IT Products in lieu of VAT. Cenvatable to manufacturer.

EXCISE DUTY

- SSI exemption criteria limit increase from Rs. 3 Cr. to Rs. 4 Cr.
- Option to claim Cenvat Credit with 60% Excise Duty withdrawn.
- Units manufacturing exempted goods cannot opt for payment of duty – compulsory availment of exemption

VAT

VAT to be introduced with effect from 1st April 2005

Contd. from page no. 1

BUDGET – 2005

expenditure which are deemed to have been incurred for employees benefit on presumptive basis is completely unwarranted. This tax in the present form will be imposed on all employers, even with one employee, whether they are taxpayers or not including trust, NGO, agriculturist or 10A, 10B assessee. This will also tax the Companies and businesses, which have been given assured commitment of NIL taxation. Even the loss making enterprises will be taxed. The deeming provisions would tax genuine business expenses and may result into double taxation on residents as well as non residents. The tax will also disregard double taxation avoidance treaty. The proposed tax is ultra virus the Constitution of India and also not in line with the current commitment of the Government. The fringe benefit tax requires separate advance tax, return, and separate assessment. This is a completely negative approach and will hamper Bharat Nirman significantly. The genuine taxpayers should not be harassed because of failure of Govt. machinery.

The salary class and more importantly pensioners and senior citizens have been denied standard deduction, Section 80L deduction as well as special tax rebate of Rs. 20,000 u/s 80B of the Income Tax Act, thereby increasing the burden of taxes on them without any justification. Even women's additional tax rebate has been withdrawn reducing their special benefit from Rs. 5000/- to Rs. 2500/-.

The service tax exemption with a threshold of Rs. 4 lacs taxable services is a welcome feature and needs to be appreciated.

The rural road map for Bharat Nirman is a well laid out strategy. Enough resources need to be directed towards the business plan of Bharat Nirman. The nation has high hopes from team of Dr. Manmohan Singh, Sh. P. Chidambaram and Sh. Montek Singh Ahluwalia. Their long term vision need to reject bureaucratic suggestions of cumbersome and complex tax laws. The Government and taxpayer's relationship is to be built on mutual faith and trust and primary emphasis should be on growth. There is a need to check corruption in Government.

PERQUISITE VALUATION INCREASED

The Government has amended Rule 3 of Income Tax Rules, 1962 vide notification dated 28th February 2005, with effect from 1st April 2005: -

1. Rent free accommodation

Valuation increased for non-government employees:

	Existing	Proposed
a. Cities having population more than 4 Lakh	10% of Salary	20% of Salary
b. Other Cities	7.5% of Salary	15% of Salary

2. Car

The Sub rule (2) providing for special treatment of car expenses and providing for specified amount of Rs.1200 / Rs.1600 per month towards taxable income has been omitted.

The motor car will therefore be taxed on actual benefit received by the employee. This will also be taxed in the hand of employers as fringe benefit tax.

1 Income Tax Decisions

Interest on loan to subsidiary company

Hon'ble Income Tax Appellate Tribunal, Mumbai Bench-B in the matter of Dy. Commissioner of Income Tax Vs. Indian Hotels Co. Ltd. held that where loan is advanced to a subsidiary by a company it stands on different footing then advance made to a sister concern or by a company to its directors or their close relative.

While determining the question of advancing of loan as a measure of business expediency, it has to be kept in mind that in case of a 100% subsidiary of company, profit of subsidiary belongs to a company and if a higher rate of interest is charged that would go down to reduce profits, whereas no interest is charged some amount would be returned in the shape of profit. (92 ITD 97).

2 CA can act as E-Intermediary

CBDT has notified the procedure for registration of Chartered Accountants (CAs) to act as e-intermediaries for filing income tax returns. The pre-requisite for registration are as follows:

1. The entity must have a digital signature certificate from any licensed certifying authority. The ICAI is one of the sub-certifying authorities.
2. Procurement of prescribed computing infrastructure (hardware, etc).
3. Copy of certificate of constitution issued by the ICAI.
4. Copy of the assessment order/intimation slip.
5. Payment of registration fees.
 - a. Processing fee of Rs.2,204 (non-refundable)
 - b. Security deposit of Rs. 25,000 (refundable)

For full details log on: www.icai.org

3 Export Benefits being taxed

Under pressure to deliver on revenue targets before the end of the year, income tax officials have found a new source of revenue – the Rs. 10,000 crore export benefits given out each year in the form of Duty Entitlement Passbook Benefits (DEPB). Taking their cue from a recent judgement by the Bombay High Court in the Rohan Dyes case, the taxman has started sending notices to various pharmaceutical companies, steel exporters, and a host of other industries, asking for taxes to be paid for the past seven years on DEPB benefits claimed by these units as tax exemptions.

Exporters are allowed to take their benefits in the form of advance licences, duty drawback or the DEPB. But Section 28 Para iii (a) of the Income Tax was not amended to take into account the fact that DEPB benefits will also be tax-exempt as was done in the case of duty drawback.

Tax officials, however, have been treating DEPB income as local sales in some case and argue that this is taxable. As per some of the recent ruling of the commissioners, Appeals of Income Tax: "If there is a positive profit before export incentive, only then the assessee is eligible for deduction u/s 80HHC (if there is) negative profit or loss before considering export incentive the CIT (has) disallowed the deduction u/s 80 HHC.

LABOUR LAWS

1 Supreme Court Decisions

Employee can be sacked for using filthy language against superior

In an order that would bring in a sense of discipline in the office, the Supreme Court has ruled that a workman can be dismissed from service for using filthy language against a superior without any provocation. The above has been decided by the Hon'ble Supreme Court in the matter of Mahindra & Mahindra vs. N B Narwade.



..... International Corporate & Tax Structuring

AUDIT

1 Revised AS - 15 - Employee Benefits

The Council of the Institute of Chartered Accountants of India has issued the revised Accounting Standard (AS) 15, Employee Benefits (revised 2005).

The revised AS-15 will come into effect in respect of accounting periods commencing on or after the date to be announced by the Council. For detail text of the revised Accounting Standard, log on: www.icai.org

2 Guidance Note on Section 227 (3) (e) and (f) of the Cos' Act amended

The Council of the ICAI at its 247th meeting held from 4th to 5th January 2005 amended the format of the Auditor's Certificate prescribed in Appendix II of the Revised Guidance Note on Section 227(3) (e) and (f) of the Companies Act, 1956. The certificate is required to be issued as per the Rules framed under section 274(1)(g). The Council has added the words "on the said date" in the first paragraph of the certificate after the phrase "...in terms of clause (g) of sub section (1) of Section 274 of the Companies Act, 1956".

The revision has been made to make it clear to the readers that the auditor's certificate is based on the situation existing only on the date of financial statement".

3 Auditors of vanishing cos come under MCA lens

Statutory auditors of companies that had raised public funds and vanished have come under the lens of the Ministry of Company Affairs (MCA) for possible collusion with promoters.

The matter would be taken up with the Institute of Chartered Accountants of India as soon as the reports from the Ministry's regional officers are received.

1 RBI eases ESOP norms

With a view to further liberalising overseas investment, it has now been decided that even in cases where the foreign company offering its shares under ESOP and has an indirect shareholding in the Indian company, i.e., through a Special Purpose Vehicle or a step down subsidiary, no prior permission of the Reserve Bank is required, as long as such holding is not less than 51 per cent.

(Source: RBI/2004-05/360 dt. 09.02.2005)

2 FDI in Construction Sector allowed

With a view to catalysing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

A. Minimum area to be developed under each project would be as under:

- i. In case of development of serviced housing plots, a minimum land area of 10 hectares.
- ii. In case of construction-development projects, a minimum built up area of 50,000 sq. mts.
- iii. In case of a combination project, any one of the above two conditions would suffice.

B. The investment would further be subject to the following conditions:

- i. Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
- ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPS.

C. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.

(Source: Press Note 2 (2005) dated 03.03.2005)

3 Press Note 1 not yet enforceable

Despite the introduction of a new Press Note 1 (2005) to replace the Press Note 18 of 1998, new norms are not enforceable for new ventures under the automatic route in the absence of a corresponding amendment to the Foreign Exchange Management (Fema) Act. Press Note 1 deals with the guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous ventures or tie-ups in India.

4 Foreign Contribution Prohibited - FCRA

The Foreign Contribution (Regulation) Act, 1976 (FCRA, 1976) stipulates in terms of Section 4 *ibid* that no foreign contribution shall be accepted by any candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judges, government servants or employees of any corporation; members of any legislature; political party or office bearer thereof. Subsection (a) and (b) of Section 10 of the Act provide that Central Government may prohibit any association not specified in Section 4 *ibid* or any person from accepting

any foreign contribution or require any association to obtain prior permission of the Central Government before accepting any foreign contribution.

Section 5 of the above mentioned Act also provides that no organization of a political nature, not being a political party can accept foreign contribution except with the prior permission of the Central Government. The Act also provides that associations having a definite cultural, economic, educational, religious and social programme should get themselves registered with the Ministry of Home Affairs, Government of India, New Delhi before receiving any foreign contribution. Such foreign contributions should be received only through the designated bank branch the name of which has been specified in the application for registration submitted to the Ministry of Home Affairs. It is further laid down in the Act that any and every association referred to in sub-section (1) of Section (6) may, if it is not registered with the Central Government, accept any foreign contribution only after obtaining prior permission of the Central Government.

Acceptance of donation from foreign source

It is further clarified that these organizations/associations can accept contributions from a "Foreign Source" only if they are registered with the Ministry of Home Affairs or only after obtaining prior permission from the above Ministry. The "Foreign Source" for the purpose of the aforesaid Act has been defined in Section 2(e) of the Act *ibid* and it is evident there from that remittances from Indians abroad i.e. Indian citizens, for the purpose of contributing to the aforesaid associations/organizations do not attract the provisions of FCRA. However, in case of contribution given by the non-resident foreign citizens of Indian origin through their NRE and FCNR accounts maintained in India, the provisions of FCRA will be attracted and these contributions are to be treated as "Foreign Source". Consequently, recipient associations/organizations would require registration under FCRA or prior permission of the central Government before accepting contributions from a 'foreign source'.



1 Master Circular – Lending to SSI Sector

A Master Circular incorporating all the existing guidelines/instructions/directives on the matter related to Small Scale Industries Sector has been prepared and available at the website of RBI at www.rbi.org.in. As per the Master Circular, Small Scale Industries are defined as follows:

(a) Small Scale and Ancillary Industries

Small Scale industrial units are those engaged in the manufacture, processing or preservation of goods and whose investment in plant and machinery (original cost) does not exceed Rs. 1 crore. These would, inter alia, include units engaged in mining or quarrying, servicing and repairing of machinery. In the case of ancillary units, the investment in plant and machinery (original cost) should also not exceed Rs. 1 crore to be classified under small-scale industry.

The investment limit of Rs. 1 crore for classification as SSI has been enhanced to Rs. 5 crore in respect of certain specified items under hosiery, hand tools, drugs pharmaceuticals and stationery items & sports goods by the Government of India.

(b) Tiny Enterprises

The status of 'Tiny Enterprises' may be given to all small scale units whose investment in plant & machinery is up to Rs. 25 lakh, irrespective of the location of the unit.

(c) Small Scale Service & Business Enterprises

Industry related service and business enterprises with investment up to Rs. 10 lakh in fixed assets, excluding land and building will be given benefits of small scale sector. For computation

of value of fixed assets, the original price paid by the original owner will be considered irrespective of the price paid by subsequent owners.

(Source: RBI/2004-05/380 dated March 1, 2005)

2 Cover for 'public deposits'

NBFCs are raising funds for their operations from various sources like public deposits, bank borrowings, inter-corporate deposits, secured/unsecured debentures, etc. In order to ensure protection of depositors interest, NBFCs should ensure that at all times there is full cover available for public deposits accepted by them. While calculating this cover the value of all debentures (secured and unsecured) and outside liabilities other than the aggregate liabilities to depositors may be deducted from the total assets. Further, the assets should be evaluated at their book value or realizable/market value whichever is lower for this purpose. It shall be incumbent upon the NBFC concerned to inform the Regional Office of the Reserve Bank in case the asset cover calculated as above falls short of the liability on account of public deposits.

Further, all NBFCs accepting/holding public deposits are directed to create a floating charge on the statutory liquid assets invested in terms of Section 45-IB of the RBI Act, 1934, in favour of their depositors. Such charge should be duly registered in accordance with the requirements of the Companies Act, 1956.

(Source: RBI / 2004-05 / 359 dt. 07.02.2005)

3 SEC mulls Sarbanes-Oxley delay for foreigners

US regulators are considering giving foreign companies an extra year to comply with onerous rules that require them to test and report on their internal controls against fraud. The Securities and Exchange Commission (SEC) is examining a delay that would mean foreign companies with US listings would not have to comply with section 404 of the Sarbanes-Oxley act until 2006.

4 Singapore to give national status to foreign banks

Singapore is set to become the hottest destination for India's private sector banks with the Singaporean government proposing to give setting up operations in the country. This move is seen as a key that Indian banks could use to open up the doors to the long forbidden retail market of Singapore.

CAPITAL MARKET

1 F & O physical settlement

The Securities and Exchange Board of India (Sebi) is likely to miss the April 2005 deadline for introduction of physical settlement in derivatives contracts as the initiatives for a stock lending scheme have floundered, since not enough entities are coming forwards to participate in the scheme.

2 Sebi extends Mapin date

SEBI has extended the date for the Individual investors to acquire the Unique Identification Number to December 31, 2005. The previous deadline was March 31, 2005.

3 Damodaran is new Sebi Chief

Industrial Development Bank of India (IDBI) Chairman and Managing Director M Damodaran is appointed as the Chairman of Sebi. Damodaran will take over from GN Bajpai, who retires, and will get a three-year term.

4 Sebi should have powers to compound offences: SAT

SEBI should be given the power of compounding of certain alleged violations in the securities market. The advance ruling system introduced by Sebi should be made binding on the regulator and Sebi should reduce its dependence on serious penal provisions in sections 11 and 11B of the Sebi Act. Sebi received some of these suggestions recently from the Securities Appellate Tribunal (SAT).

INMAGS

..... Trading and F & O Member National Stock Exchange,
Depository Participant, NSDL

advl.

INSURANCE

1 IRDA to set up insurance institute

The Insurance Regulatory and Development Authority (IRDA) is planning to set up a school of actuarial sciences. The regulator talks with the Actuaries Society of India for this project.

2 IRDA revises norms on broking commissions

IRDA has decided to increase the eligibility limit for obtaining a special discount of five per cent in lieu of agency commission and brokers' remuneration from Rs. 3 crore paid-up capital to Rs. 15 crore without any distinction between the private and public sectors.

Under the new norms, IRDA has barred companies from seeking a special discount of agency commission for mega risk covers above Rs. 1,500 crore from the next fiscal. It also raised the eligibility criteria from Rs. 3 crore to Rs. 15 crore for companies to get the special discount.

CUSTOMS

1 Customs duty will apply on actual price paid

In a ruling that would give a major relief to importers, the Supreme Court has held that "the customs duty on an imported good will apply on the price actually paid by the buyer, regardless of any fluctuation in the global price of the good. Upholding a customs tribunal order, the court held that neither the state-run Oil & Natural Gas Corporation (ONGC) nor the UK-based equipment major Pride-Former (PF) would have to pay any differential duty on the oilrig leased to ONGC by the latter in 1999.

VAT

1 Corporates face taxing times in VAT regime

Corporates, particularly in the fast-moving consumer goods, pharmaceuticals and consumer durables sectors, will have to rework their procurement patterns for the value-added tax (VAT) because of the continuation of central sales tax (CST) and the non-availability of VAT credit on inter-state transactions.

As the 4 % CST was not "VATable", corporates, whose vendors were located in another state, would either have to shift their vendors to the state of manufacture or ask them to set up a storage area in the state of manufacture so they could undertake a stock transfer instead of selling raw materials to obtain VAT credit. This might not be viable for smaller vendors. Similarly, corporates, which have centralised manufacturing, may also resort to increasing the number of local sales rather than selling outside the state since such sales will not get VAT credit

POSTPONEMENT OF EFFECTIVE DATE OF MANDATORY CPE TO ALL MEMBERS IN SERVICE IN INDUSTRY

We hereby inform our readers that in Volume XVI No. 2 of February 2005 issue of our Journal under the heading ICAI News 'CPE Programme Postponed' has been published wrongly.

Instead it should have been published as 'Postponement of Effective Date of Mandatory CPE to All members in service in Industry, or engaged otherwise than in practice from 01.01.2005 to 01.01.2006'.

NEED Long Term Funds? Short Term Funds? Treasury Management

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