

Preface:

The public expectation is that the Finance Minister must take some bold decisions and introduce reforms as was done in the year 1991, which propelled the growth of our economy. It is indeed a very challenging task considering the fact that the Finance Minister has to achieve the process of fiscal consolidation and at the same time improve the quality of spending which will augment demand and boost capital expenditure. The revenue required for achieving this objective should be realized without increasing the already existing inequitable distribution of wealth. This is a good opportunity to improve the GDP and the economic growth of our country.

CA. R. Bupathy
Partner

RECENT INITIATIVES BY THE GOVERNMENT OF INDIA

The Prime Minister has announced the scheme of “STARTUP INDIA” to facilitate entrepreneurship thereby boosting our economy. The action plan introduced provides certain facilities for start-up companies.

❖ Facilities provided for start-ups:

- A mobile app to be launched on April 1, 2016 through which startups can be registered in a day. There will also be a portal for clearances, approvals and registrations.
- Faster patent registration and protection for Intellectual Property rights
- Self-certification compliance by startups
- Norms to be relaxed for public procurement of startups.
- Patent costs to be reduced by 80 per cent
- Availability of credit guarantee fund for startups
- Three-year tax exemption for startups
- Tax exemption on capital gains
- No inspection for 3 years of start-up businesses in respect of labour, environment law compliance post self-certification
- PPP (Public Private Partnership) model being considered for 35 new incubators; 31 innovation centres at national institutes and 7 research parks, 5 new bio-clusters

❖ Eligibility criteria to be considered as a start-up:

- It must be an entity registered/incorporated as a Private Limited Company under the Companies Act, 2013; or Registered Partnership firm under the Indian Partnership Act, 1932; or Limited Liability Partnership under the Limited Liability Partnership Act, 2008.
- Five years must not have elapsed from the date of incorporation/registration.
- Annual turnover (as defined in the Companies Act, 2013) in any preceding financial year must not exceed Rs. 25 Crores.
- Startup must be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.
- The Startup must aim to develop and commercialise a new product or service or process; or a significantly improved existing product or service or process that will create or add value for customers or workflow.
- The Startup must not merely be engaged in:
 - a. developing products or services or processes which do not have potential for commercialisation; or
 - b. undifferentiated products or services or processes; or
 - c. products or services or processes with no or limited incremental value for customers or workflow
- The Startup must not be formed by splitting up, or reconstruction, of a business already in existence.
- The Startup has obtained certification from the Inter-Ministerial Board, setup by DIPP to validate the innovative nature of the business, and:
 - a. be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an incubator established in a post-graduate college in India; or
 - b. be supported by an incubator which is funded (in relation to the project) from GoI as part of any specified scheme to promote innovation; or
 - c. be supported by a recommendation (with regard to innovative nature of), in a format specified by DIPP, from an incubator recognized by GoI; or
 - d. be funded by an Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with SEBI* that endorses innovative nature of the business; or
 - e. be funded by the Government of India as part of any specified scheme to promote innovation; or
 - f. have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

INCOME TAX

Additional modes of Electronic Verification while filing IT return:

- ❖ In addition to the existing modes of generating of Electronic Verification code, two more modes are being introduced :
 - a. Verification through bank account: A facility to pre-validate the bank account details will be available in the profile settings menu of the e-filing website: <https://incometaxindiaefiling.gov.in/>. If the assessee provides the bank details such as bank account number, IFS code, E-mail id and Mobile Number, then these details along with the PAN and name of the assessee available in the return will be validated against the details of the taxpayer registered with the bank. If this pre-validation is successful then assessee can opt for “Generate EVC using bank account details” for verifying the return
 - b. Verification through Demat account: Similarly, pre-validation can be done using the Demat account details in which case the Demat account number, E-mail id, mobile number, PAN and name of the assessee will be validated against the details of the taxpayer registered with the depository (CDSL /NDSL). In this case the assessee can opt for “Generate EVC using Demat account details”

The list of banks and the names of depositories participating in this facility will be available in the above-mentioned website.

Scrutiny Assessment :

- ❖ CBDT has directed the Assessing Officers to ensure that initial notice for scrutiny under section 143(2) is accompanied by a notice under section 142(1) along with the questionnaire containing details of documents or information to be produced by the taxpayer in connection with scrutiny assessment proceedings.
- ❖ CBDT has also clarified the extent of enquiry in cases selected for scrutiny through CASS – 2014. Specific issue based enquiry is to be conducted only in cases selected on the basis of AIR or CIB or 26AS data. In such cases the Assessing Officer has to intimate the reasons for selection for scrutiny.
- ❖ Cases selected under CASS 2015 will be either be “Limited Scrutiny” or “Complete Scrutiny”. In Limited Scrutiny cases, the questionnaire issued under section 142(1) should contain only specific reasons for which the case has been selected. These cases shall be completed expeditiously in a limited number of hearings. However, during the assessment proceedings, if it comes to the notice of the Assessing Officer

that there is potential escapement of income exceeding Rs 5 lakhs, then the case may be taken up for complete Scrutiny.

CORPORATE LAW

Amendments to INC1:

- ❖ New Form INC1 (Application for reservation of Name) has been introduced. Few rules regarding selection of names have been omitted such as:
 - Name would be considered undesirable (a) if it includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters; (b) the proposed name is vague or an abbreviated name (c) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal (d) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal (e) In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other person(s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached and it shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.

Earlier only two opportunities were provided to rectify the defects in the said application but now third opportunity will also be provided subject to the condition that the total period for resubmission does not exceed 30 days.

Establishment of Central Registration Centre:

- ❖ Central Government has established a Central Registration Centre having territorial jurisdiction all over India, for processing and disposal of applications for reservation of names i.e., e-Form No. INC-1. However, processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013 as per the provisions of the Act and the rules made thereunder.

The CRC is located at Indian Institute of Corporate Affairs (IICA), Plot No. 6,7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code-122050. 5

Establishment of Investor Education and Protection Fund Authority:

- ❖ A separate authority consisting of a Chairperson, 6 members and a Chief Executive Officer is to be constituted on a date to be notified by the Central Government. This Authority is being set up to administer the Fund for Investor Education and Protection.

FAQs on CSR provisions:

- ❖ As per section 135 of the Companies Act 2013, CSR provisions would be applicable to companies including Section 8 companies having: (a) net worth of Rupees Five hundred Crores or more or (b) turnover of Rupees One Thousand Crores or more or (c) net profit of Rupees Five Crores or more during any financial year. Such companies have to spend, an amount of at least 2% of the average net profit made during the three immediately preceding years. Few clarifications regarding the CSR provisions are given below:
 - Average profit means Profit Before Tax (PBT) and not Profit After Tax.
 - The amount spent by a company towards CSR activities cannot be claimed as business expenditure.
 - There are no specific tax exemptions given for the amount spent on CSR. However, the existing exemptions under Income Tax Act such as contributions to Prime Minister's Relief fund, scientific research, rural development projects, skill development projects etc. are still available.
 - The following activities would not constitute CSR activity such as : (a) Activities that benefit only the employees of the company (b) One-off events such as Marathan / awards / charitable contribution / advertisement / sponsorships of TV programmes etc (c) Expenses incurred for fulfilling requirements under any other Act / Statute (d) Contribution either directly or indirectly to any political party (e) Activities undertaken in the normal course of business and (f) Projects / programmes or activities undertaken outside India
 - Contributions to a Trust / Society or to Section 8 company would also qualify as CSR expenditure provided that the Trust / Society or Section 8 company is created exclusively for undertaking CSR activities
 - The CSR policy has to be disclosed in the company's website if any and also to be a part of the Board's annual report
 - In the case of a Foreign company, the balance sheet should contain an annexure regarding report on CSR activities
 - Contribution in kind does not qualify as CSR expenditure
 - Any excess amount spent over and above 2% of the average net profit for the preceding 3 years cannot be carried forward to the subsequent years for adjusted. However if there is any unspent amount from the minimum CSR expenditure , the same can be carried forward to the subsequent year but the amount should be over and above the 2% of the subsequent year's contribution to CSR
 - There is an option available to the companies to combine their CSR programmes with other similar programmes of other companies by pooling their CSR resources.

RBI / FEMA**Mandatory filing of form ARF, FCGPR and FCTRS on e-Biz platform:**

- ❖ Online filing of the following forms relating to Foreign Direct Investment (FDI) has been enabled:(a) Advance Remittance Form (ARF) for reporting the FDI inflows to RBI (b) FCGPR Form which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow; and (c) FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India. At present, both the options, i.e. online filing and physical filing of abovementioned forms, are available to the users. However, from February 8, 2016 the physical filing of forms ARF, FCGPR and FCTRS will be discontinued and forms submitted in online mode only through e-Biz portal will be accepted.

Provision of safe deposit lockers by NBFCs:

- ❖ RBI has notified that the NBFCs (Non-banking Financial companies) providing safe deposit locker facilities is a fee-based service and shall not be treated as financial activity. Such NBFCs has to disclose to their clients that this particular activity is not regulated by the Bank

Amendment of Gold Monetisation Scheme:

- ❖ The revamped Gold Monetisation scheme is as follows:
 - Persons eligible to make a deposit - Resident Indians (Individuals, HUFs, Proprietorship & Partnership firms, Trusts including Mutual Funds/Exchange Traded Funds registered under SEBI (Mutual Fund) Regulations and Companies) can make deposits under the scheme. Joint deposits of two or more eligible depositors are also allowed under the scheme and the deposit in such case shall be credited to the joint deposit account opened in the name of such depositors.
 - The minimum deposit at any one time shall be 30 grams of raw gold (bars, coins, jewelry excluding stones and other metals). There is no maximum limit for deposit under the scheme.
 - In the case of Short Term Bank Deposit (deposits for period 1 – 3 years), both principal and interest shall be denominated in gold. In the case of Medium and Long Term Government Deposits (deposits for a medium term of 5 – 7 years or for a long term 7 – 12 years), the principal will be denominated in gold. However, the interest will be calculated in Indian Rupees with reference to the value of gold at the time of the deposit.
 - All deposits under the scheme shall be made at the CPTC (Collection and Purity Testing Centres). Banks may accept the deposit of gold at the designated branches, especially from the larger depositors.

- Banks may also allow the depositors to deposit their gold directly with the refiners that have facilities to carry out final assaying and to issue the deposit receipts.
- The quantity of gold will be expressed up to three decimals of a gram.
- The rate of interest on such deposit will be decided by Central Government and notified by Reserve Bank of India from time to time. The current rate of interest as notified by the Central Government are as under:(i) On medium term deposit – 2.25% p.a.(ii) On long term deposit – 2.50% p.a.
- Minimum lock-in period: A Medium Term Government Deposit (MTGD) is allowed to be withdrawn any time after 3 years and a Long Term Government Deposit (LTGD) after 5 years.
- Penalty will be charged on premature withdrawal

VAT

Launch of new website:

- ❖ New website <https://ctd.tn.gov.in/> has been launched by the Government of Tamil Nadu on 29th January 2016. This website enables e-services such as e-Registration, e-Payment, e-Return filing, e-CST forms issuance etc. The dealer can register and get a user id and password. The following guidelines are issued to the dealers for smooth transition from old system (www.tnvat.gov.in) to new system (<https://ctd.tn.gov.in/>).
 - Dealer Registration / Modification to Registration should be done only through new Portal e-C Tax (<https://ctd.tn.gov.in/>).
 - All the existing dealers and new dealers coming for any e-services / registration should signup in the new system with the individual mobile number and e-mail id.
 - Dealers who have not provided their valid PAN should update their valid PAN in the new system.
 - Dealers will receive SMS / e-mail notification and can track the status.
 - No cheque / Cash payment shall be accepted at Assessment Circles for all remittances including Registration Fees.
 - Facility for filing of returns using Digital Signature has been introduced. No need for filing of Hard Copy in the Assessment Circle if Digital Signatures are used for filing of returns.
 - Monthly Returns under TNVAT Act, CST Act, Entertainment Tax Act and Tamil Nadu Tax on Entry of Motor Vehicles Act from the month of March 2016 (February 2016 returns) shall be filed along with payment in the new portal.
 - Filing of monthly returns along with payment and online generation of C & F forms can be done in the old portal only upto the month of January 2016 returns.

- From 1st March 2016, e-Transit pass (Form LL) shall be generated from the new system.
- Online generation of Form JJ / MM / KK has been introduced for movement of goods in the new portal.
- Generation of TDN by contractees and online TDS payment has been introduced. From 1st March 2016, manual TDS payment should be made only in the new system.

PROVIDENT FUND

Removal of grace days for remittance to EPFO

- ❖ Till the month of January 2016, a grace period of 5 days was allowed from the due date of making remittances to EPFO upto 20th of every month. However, from February 2016 onwards, this grace period has been withdrawn and the remittances have to be made by 15th of every month.

HIGH COURT VERDICTS

❖ DIT vs. Shri Vile Parle Kelvani Mandal:

The assessee being a trust had set up schools and colleges and also been conducting management and development programmes. On weekends and holidays, the halls were let out for marriages, sales etc. The income generated from the letting out was also used in the educational activities. The assessee had claimed exemption under Sec 11 (applicable to Trusts). The High Court of Bombay held that the letting out activity was an incidental activity and the income so derived was used for the educational institute and not for any particular person, this income was not chargeable to tax.

❖ CIT vs. Radio Today Broadcasting Ltd.:

The assessee being in the business of FM radio broadcasting had claimed additional depreciation u/s 32(1)(ii) in the Assessment year 2008-09. The Assessing Officer disallowed the additional depreciation on the grounds that production of radio programmes cannot be considered as an article or thing. However, the Delhi High Court held that the broadcast of radio programmes includes activities of producing, recording, editing and making copies and they can even be sold. The plant and machinery was held to be used for the manufacture / production of an “article or thing” and hence the assessee is entitled to claim additional depreciation.

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