

Tax & Corporate law Bulletin

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NOVEMBER 2011

From the Editor's Desk...

Dear Reader,

Greetings for the season.

Hope the festival of lights enlightens your home and heart with peace and serenity. Wishing you lots of joy and happiness on Diwali. Happy Diwali. Some updates of the month of October:

Google to offer free websites to small enterprises, Finance ministry sets new performance benchmarks for government banks, Applicability of revised schedule VI format to companies Proposing IPO and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & associates
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“Adapting swiftly to the
global business environment”



DIRECT TAX

➤ **Section 90a of the income tax act, 1961 – DTAA – adoption by Central government of agreement with TAIPEI**

Notification No. 48/2011 [F. No. 500/02/2001-FTD II], dated 02/09/2011 The Central Government has adopted the agreement between India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and has notified that all the provisions of the said agreement shall be given effect to in the Union of India with effect from the 1st day of April, 2012.

➤ **Section 80CCF of the income tax act, 1961 – deduction – in respect of subscription to long term infrastructure bond – notified long term infrastructure bond**

Notification No. 50/2011 [F. No. 178/43/2011 SO(ITA-1)], dated 09/09/2011 The Long Term Infrastructure Bonds to be issued in the financial year 2011-12 shall be issued by –

- The Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);
- The Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- The Infrastructure Development Finance Company Limited, a company Formed and registered under the Companies Act, 1956 (1 of 1956);
- The India Infrastructure Finance Company Ltd.; a company formed and registered under the Companies Act, 1956 (1 of 1956); and
- A Non-Banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India.

Tenure of the bond –

- The tenure of the Bond shall be for a minimum period of ten years;
- The minimum lock-in period for an investor shall be five years;



- After the lock-in period the investor may exit either through the secondary market or through a buyback facility, specified by the issuer in the issue document at the time of issue;
- The bond shall also be allowed as pledge or lien or hypothecation for obtaining loans from Scheduled Commercial Banks, after the said lock-in-period.

➤ **Section 10(15) of the income tax act, 1961 – notified tax-free bonds/debentures of public sector companies**

Notification No. 52/2011 [F. No. 178/56/2011-IT(A 1)], dated 23/09/2011 The Central Government has authorised the entities mentioned in column (2) of the table below, to issue, during the financial year 2011-12, tax free, secured, redeemable, non-convertible bonds of rupees 1,000 each in case of public issue and rupees 1,00,000 each in other cases, aggregating to amounts mentioned in column (3) of the said table, subject to the conditions mentioned in the said notification. The tenure of the bonds shall be ten or fifteen years.

➤ **Income tax (seventh amendment) rules 2011 – amendment in Rule 114 and substitution of form 49a**

Notification No. 56/2011 [F. No. 133/48/2011 SO (TPL)], dated 17/10/2011 The CBDT has notified new Forms for making PAN Application. Form 49A – for Individuals who are citizens of India, HUF and other entities which are registered or formed in India and Form 49AA – for Individuals who are not citizens of India and other entities formed or registered outside India.

RECENT JUDGEMENTS

➤ **Sec. 2(15) & 12AA Carrying on of business & 12AA Registration**

Assessee association is vigorously pursuing transportation business by receiving freight charges on behalf of its members and there being no public utility, it was not entitled to registration under s. 12AA. [Commissioner of Income Tax vs. Truck Operators Association (2011) 243 CTR (P&H)302].

➤ **Sec. 2(24), 15, 17(1)(iv), 17(3)(ii), 192, 201(1) & 201(1A) Tips represent Salary Income liable for TDS**

Once the tips are paid by the customer either in cash directly to the employees or by way of charge to the bills, the employee can be said to have gained additional income and therefore tips constitute salary within the meaning of s. 15 r/w s. 17(3); assessee employer was an, assessee -in-default for non-deduction of tax at source on account of banquet and restaurant tips collected and paid by it to its employees. [Commissioner of Income Tax vs. ITC Ltd. (2011) 243 CTR (Del) 114].

➤ **Sec. 10A-Exemption entitlement**

Assessee Company established on 17th Dec., 2003 but secured STPI registration on 4th Aug., 2004 and also export having been commenced after 4th Aug. 2004, it was entitled to exemption under s. 10A for

the asst. yr. 2005-2006. [Commissioner of Income Tax & Anr. Vs. Expert Outsource (P) Ltd. (2011) 243CTR(Kar) 411].

➤ **Sec. 10(22) Establishment of SSI- not educational activity**

Exemption under s. 10(22) is available only if the assessee is running an educational institution solely for educational purposes and not for the purposes of profit; exemption under s. 10(22) is not allowable to the assessee as its objects include establishing small-scale industries of all kind and to aid and assist the poor, the grief-stricken, the destitute, and person and animals suffering from calamities. [Commissioner of Income Tax Act vs. Gurukul Ghatkeshwar Trust (2011) 243 CTR (AP) 154].

➤ **Sec.11 & 11(4A) Subletting of tenanted accommodation does not amount to business**

To enable the trust to carry out its charitable object in effective manner if rental income was received by way of subletting, for that reason, the exemption could not have been denied by the AO by invoking s. 11(4A) and also since in the past the assessee got the benefit of exemption in respect of the same rental income, there was no just reason for disallowing the relief claimed. [Director of Income Tax (Exemption) vs. Sahu Jain Trust (2011) 243CTR(Cal) 131].

➤ **Sec. 11(1)(a), 11(5), 13(1)(c) & 13(3) Loans to interested persons resulting in denial of exemption**

Assessee-trust having advanced certain amount by way of loan on interest to a firm in which the president of the trust was interested, and also given loan to the founder's widow who was one of trustees of the assessee-trust, it has violated the provision of ss. 11(5) and 13(1) (c) and therefore, it is not entitled to exemption under s. 11. [Commissioner of Income Tax Act vs. Gurukul Ghatkeshwar Trust (2011) 243CTR(AP) 154].

➤ **Sec. 31(1) (ii), first proviso & 43(3) Single unit not having functional value not entitled to 100% depreciation**

Each item of shuttering material cannot be treated as one whole shuttering material forming one plant eligible for 100 per depreciation under the first proviso to 31(1) (ii). [Commissioner of Income tax vs. Vijaya Enterprises (2011) 243 CTR (AP) 488].

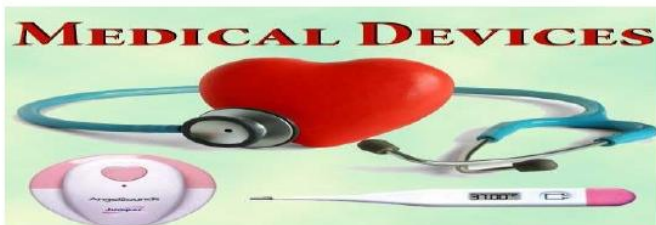
➤ **Sec. 31(I) & (1) Heart is not “plant” hence related expenditure is personal expenditure**

Expenditure incurred by the assessee advocate on the coronary by-pass surgery can not be allowed either under section 31 or under 37(1). [Shanti Bhushan vs. Commissioner of Income Tax(2011) 242CTR(Del) 375].

➤ **Sec. 32(1)(ii) , 32(2) Set-off of b/f depreciation**

Once the assessee company is in existence, it is entitled to depreciation though it has discontinued its business. Provision of s. 32(2) as amended w. e. f. 1st April, 1997 permit set off of brought forward unabsorbed depreciation firstly against the business profit and then against income under any other head in asst. yr. 1997-98 and subsequent assessment years for a period of eight years. [Commissioner of Income Tax vs. Kriti Resorts (P) Ltd. (2011) 243CTR(HP) 341].

➤ **Sec. 32A Medical equipments entitled to Investment Allowance Reserve**



X-ray ,gamma camera system, ultrasound and ECG which are used to obtain images of the patients and prints and graphs of the pulses of various organs produce things as contemplated in s.32 A and

therefore assessee engaged in running a hospital as commercial activity is entitled to investment allowance on the said instrument installed in its premises. [Commissioner of Income Tax vs. Apollo Hospital Enterprises (2011) 242CTR(Mad)229].

➤ **Sec. 35AB, 41(1) & 143(1) (a). Income-tax paid abroad is part of know-how:-**

Income-tax paid by the assessee in respect of liability of foreign collaborator under the agreement for supply of technical know-how; is part of the “consideration” and assessee would be titled to deduction thereof in terms of s. 35AB. As prima facie adjustment is permissible only respect of claims, the incorrectness of which is apparent from any information in the return and debatable claims are not liable to such prima facie adjustment ,AO was not justified in making prime facie adjustment in respect of the deduction claimed under s. 35AB towards income –tax paid by the assessee as part of the lump sum consideration for acquiring the know-how. [Tata Yadogawa Ltd. vs. Commissioner of Income Tax (2011) 243CTR(Jharkhand) 263].

➤ **Sec. 37(1) & 92 Payment of Royalty is allowable business expenditure:-**

Payment of royalty by assessee company to its US based holding company is not hit by the provisions of s. 92 in the absence of any comparable case on record to determine the ordinary profit in similar business and the price fixed has been accepted as ALP by the TPO; payment of royalty being a business expenditure which was incurred wholly and exclusively for the purposed of business of the assessee, it is to be allowed in to as business expenditure. [Commissioner of Income Tax vs. Oracle India (P) LTD. (2011) 243 CTR (Del) 103].

➤ **Sec. 37(1) & 43B(b) Provision for Pension not hit by S.43B:-**

Provision for pension payable to employees is not covered by s. 43B(b) and same is allowable as deduction. [Commissioner of Income Tax vs.

Ranbaxy Laboratories Ltd. (2011) 243CTR(Del) 242].

➤ **Sec. 37(1) Allow ability of ransom money:-**

In the absence of any provision that payment of ransom is prohibited by any law, Explanation to sub-s (1) of s. 37 is not applicable to payment of ransom money and, therefore, ransom money paid by the assessee company to the kidnappers to secure release of its director who was kidnapped when he was on tour in connection with the business of the assessee company is allowable as business expenditure. [Commissioner of Income Tax vs. Khemchand Motilal Jain Tobacco Products (P) Ltd. (2011) 243CTR(MP)270].

➤ **Sec. 37(1) 92C. Capital vs. Revenue and Arms length price:-**

Finding of the Tribunal that the advertisement expenses incurred on purchases of signboards are revenue expenditure being finding of fact which has not been shown to be erroneous in any manner and based on appreciation of material on record, no interference is called for. In the absence of any perversity in the finding of the Tribunal in the selection of a different set of comparable for determination of ALP and re-computation of ratio of operating profit/total cost at 21.97 per cent as against 35.26 per cent adopted by the TPO, no interference is warranted. There being no illegality in the finding of the Tribunal allowing depreciation on administrative assets for determining the operating profit while computing ALP, no interference is warranted. [Commissioner of Income Tax vs. Rakhra Technologies (P) Ltd. (2011) 243 CTR (P&H)505].

INDIRECT TAX

SERVICE TAX

➤ **Central Government Vide Notification No.48//2011-ST dated 19th October, 2011**

made following amendment in Service Tax Rules, 1994:-

- Rule 4(1A) inserted whereby power is granted to CBEC to issue an order specifying the documents required to be submitted along with service tax registration application & the period within which such documents to be submitted
- Rule 7(4) inserted whereby power is granted to CBEC to issue an order extending the date of filing of service tax return under circumstances of special nature after specifying such nature.
- Amended Service Tax Return Form ST-3 so as to provide that in terms of the Point of Taxation Rules, 2011, the words “received/paid” used in form to be construed as “received or receivable/paid or payable”.

CBEC vide Circular No.147/16/2011-ST dated 21st October, 2011 has clarified that the benefit of exemption from levy of service tax available to Works Contract service (WCS) in respect of construction of Dams, Tunnels, Road, Bridges etc. can be extended to sub contractors engaged by principal contractor in case the services provided by the sub-contractors to the main contractors are independently classifiable under Work Contract Service (WCS) & so long as they are in relation to the construction of Dams, Tunnels, Road, Bridges etc. CBEC vide Order No.1/2011-ST dated 20th October, 2011 has extended the date of filing of half yearly service tax return for the period April to September, 2011 from 25th October, 2011 to 26th December, 2011.

RECENT JUDGEMENT

➤ **Banking & Other Financial Services**

“Interchange income” received by an ‘issuing bank’ of credit card [i.e. the bank that issues credit cards to the customers for buying goods and services in merchant establishments (ME) on credit] from the ‘acquiring bank’ (i.e. the bank that has a contract

with the MEs for settlement of dues incurred by the cardholders at the MEs for a consideration called 'ME discount') which is paid by the 'acquiring bank' out of the ME discount earned is liable for service tax under the category of "Banking and other financial services" w.e.f. 16.7.2001 [more particularly, under the erstwhile Clause (ii) of section 65(12)(a) 'credit and services'] since the issuing bank had issued the credit cards to its customers and the use of the card by the cardholder (customer) at the MEs gave rise to the share of Interchange fee from the acquiring bank [ABN AmroBank v. CCE (2011) 23STR529 (Tri-Del)].

➤ **Business Auxiliary Services**

Where a company NBCC contracted to render site formation services to NTPC and in turn sub-contracted the work to two companies –SAC&APR, the Tribunal held-



- NBCC's supervision of their own sub-contracted job to SAC & APR cannot be considered as rendering 'business auxiliary services' to SAC & APR (provision of service to NTPC on behalf of SAC & APR) and the margin retained by them cannot be treated as consideration notionally received from SAC & APR towards the said 'business auxiliary services'.
- SAC & APR also cannot be regarded as rendering business auxiliary services to NBCC (provision of service to NTPC on behalf of NBCC) since the services are essentially provided by them to

NBCC and not to NTPC. The subcontracted service is also in the nature of site formation services provided to main contractor NBCC. Further, the tax was not paid by SAC & APR on the basis of Board's clarification dated 14-9-97 (that sub-contracted services are not liable for service tax if the main contractor has paid the same) and if the tax was paid by the sub-contractors the same was available as credit to NBCC and therefore, it is a case of revenue neutrality. Therefore, no tax is Demandable from the sub-contractors –SAC&APR. [National Building Construction Corporation Ltd v. CCE & ST 2011 (23) STR 593 (Tri. Kol.)].

➤ **Construction of Residential Complex Services**

Where the respondent Co-op. Housing Society had availed the services of Contractor for constructing the residential units for its members it was held by the High Court relying upon the High Court judgment in the case of M/s Sujal Developers that the Housing society is not liable to pay service tax since the society cannot be said to have supplied any services to its members (it being a service to oneself). Further, the explanation inserted in sub-clause (zzzb) of section 65(105) of Finance Act, 1994 w. e. f. 1.7.2010 would also not be applicable since it was introduced in the statute book long after the taxing event in the present case had arisen and there was no indication in the amendment to make it retrospective or clarificatory in nature. [CST v. Shrinandnagar – IV Co-op Housing Society Ltd. (2011) 23STR439 (Guj)].

➤ **Consulting Engineer Service**

On facts, where the assessee supplied manpower to its client which worked under the instructions of the client for successful completion of pre-commissioning, commissioning, operation and maintenance of plant it was held that such services are not liable for service tax under the category of 'Consulting Engineer Service' since the assessee cannot qualify as a 'Consulting Engineer' and the

activities undertaken by the assessee cannot be considered as 'advice', 'consultancy' or 'technical assistance' in nature [Reliance Industries Ltd. vs. CCE (2011) 23 STR 555 (Tri- Ahmd.)]

➤ **Renting of immoveable property**

The Bombay High Court upheld the constitutionality of service tax on renting of immoveable properties and held as follows:

- The Parliament by virtue of entry 97 of List 1 of the Seventh Schedule has the legislative competence to impose service tax on renting of immovable property and this tax does not fall within the legislative competence of the States under Entry 49 of List II of the Seventh Schedule to the Constitution as being a tax on land and buildings. To be a tax on lands and buildings under Entry 49 of List II, the tax must be directly a tax on lands and buildings. That is not a true character of an impost on taxable service. The service tax that has been legislated upon by Parliament is not a tax on land.
- The legislative basis that has been adopted by Parliament in subjecting taxable services involved in the renting of property to the charge of service tax cannot be questioned on the ground that 'renting' does not involve any element of service. The assumption by a legislative body that an element of service is involved in the renting of immovable property is certainly not an assumption which can be regarded by the Court as being so manifestly absurd or perverse as to lead to an inference that Parliament had treated as a service, an item which in no rational sense could be regarded as involving service.

Further, even if the Court were to proceed on the basis that no element of service is involved, that would not make the legislation beyond the legislative competence of Parliaments. So long as the legislation does not trench upon a field which has been reserved to the State

legislatures, the only conclusion that can be drawn is that the law must be treated as valid and within the purview of the field set apart for Parliament. In this regard the court noted the observations of the Supreme Court in Tamil Nadu Kalyana Mandapam Association vs.UOI (2006) 3STR260 (SC) that levy of service tax on a particular kind of service cannot be stuck down on the ground that it does not conform to common understanding of the word 'service' as long it does not transgress a specific restriction contained in the constitution and hence held that the validity of legislation does not depend upon determination of fact by the court that a service is provided in the transaction which is brought to tax.

- The levy of a service tax on renting of immovable property with retrospective effect from 1 June 2007 by the Finance Act, 2010 is constitutional - the object of the amendment, brought about with retrospective effect, is to expressly bring Legislative provisions in conformity with the original parliamentary intent. [Retailers Association of India and Ors. Vs. UoI & Ors 2011 (23)STR561 (Bom.)].

CENTRAL EXCISE



➤ **Amendment in the constitution and system of Regional Advisory Committee (RAC)**

RAC was constituted purely for giving advises to resolve procedural difficulties of general nature. RAC was formed separately for organized LAW

UPDATES sectors and small scale industries and the same was held at specific intervals for resolving such general queries faced by trade and industry. Now the structure of Regional Advisory Committee has been changed. Single RAC would be reconstituted for all the assesseees by Zonal Chief Commissioner and the meeting would be held on a quarterly basis under the chairmanship of the Zonal Chief Commissioner subject to certain exceptions. (Circular No. 953/14/2011-CX dated 12th September, 2011).

➤ **Filing of appeal in case of dispute with respect to rate of duty or value of Goods**

As per Section 35L (b) of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 and Section 130E (b) of Customs Act, 1962, appeal shall lie to the Supreme Court against a Tribunal order if the case involves determination of question in relation to the rate of duty or value of the goods. Accordingly, it has been instructed that the Commissioners should examine the issue involved in the dispute very carefully for deciding the appellate forum. (F. No. 390/Misc./100/2010-JC dated 22nd September, 2011).

➤ **E-filing of Central Excise and Service Tax Returns and E-payment of Central Excise Duty and Service Tax**



DG (Systems) has outlined comprehensive instructions with respect to the procedure for electronic filing of Central Excise duty and Service Tax returns and electronic payment of taxes under ACES. (Circular No. 956/17/2011-CX dated 28th September, 2011).

FEMA

➤ **External Commercial Borrowings (ECBs) – Rationalisation and Liberalization**

A.P. (DIR Series) and Circular No.30 dated September 27, 2011

Considering the specific needs of the infrastructure sector, RBI has reviewed the existing ECB policy in consultation with the Government of India and it has allowed Indian companies in the infrastructure sector (as defined in the ECB Guidelines) to avail of ECBs in Renminbi (RMB), under the approval route, subject to an annual cap of USD 1 billion pending further review. The RBI approval will be valid for 3 months from the date of issue of the approval letter and the loan agreement should be executed within the validity period. The company may thereafter submit the completed Form 83 to the RBI for allotment of loan registration number (LRN) within 7 days (from the date of signing the loan agreement between the borrower and the lender). In case the borrower fails to obtain LRN within the above period, the RBI approval will stand cancelled. AD Category- I bank will be permitted to open Nostro accounts in Renminbi (RMB).

The designated AD - Category I bank shall monitor the end-use of funds and banks in India will not be permitted to provide any form of guarantees.

➤ **Revision in Guidelines for appointment of Agents / Franchisees by Authorised Dealer (AD) Category-I, AD Category-II and Full Fledged Money Changers**

A.P. (DIR Series) Circular No.31 dated October 03, 2011

In view of the growth in money changing activities undertaken by the agents / franchisees of AD Category-I banks / AD Category II / FFMCs and the issuance of Anti Money Laundering (AML) Guidelines on money changing activities and Need to exercise adequate control over the franchisees by the franchisers, the RBI has amended certain instructions

contained in the A.P. (DIR Series) Circular No. 57 [A.P. (FL/RL Series) Circular No. 04] dated March 9, 2009 in terms of which the Guidelines for appointment of Agents / Franchisees by Ads Category - I, Ads Category – I and FFMCs were prescribed.

➤ **Consolidated Foreign Direct Investment (FDI) Policy – Circular 2 of 2011 Effective from October 1, 2011**

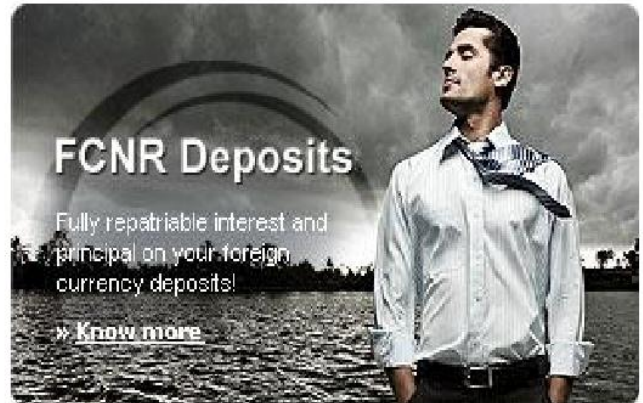
The Department of Industrial Policy and Promotion (DIPP) has, on September 30, 2011 issued updated Consolidated FDI Policy Circular 2 of 2011 which is effective from October 1, 2011. This circular subsumes and supersedes all Press Notes / Press Releases / Clarifications / Circulars issued by DIPP, which were in force as on September 30, 2011, and reflects the FDI Policy as on October 1, 2011.

➤ **Liberalized Remittance Scheme (LRS) for Resident Individuals – Revised Application cum Declaration Form**

A.P. (DIR Series) Circular No.32 dated October 10, 2011

In terms of the A. P. (DIR Series) Circular Nos. 17 and 18 dated September 16, 2011, a resident individual has been permitted to make a gift / loan in rupees to a Non-Resident Indian /Person of Indian Origin close relative(s), subject to certain terms and conditions. One of the conditions is that the gift / loan amount should be within the overall limit of USD 200,000 per financial year as permitted under the LRS for a resident individual. Accordingly, the Application cum Declaration form for purchase of foreign exchange under The LRS is revised.

➤ **Opening Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B)] account in any freely convertible currency**



A.P. (DIR Series) Circular No.36 dated October 19, 2011

Presently, deposit of funds in the FCNR (B) accounts is permitted only in designated permissible currencies viz. Pound Sterling, US Dollar, Japanese Yen, Euro, Canadian Dollar and Australian Dollar. Pursuant to the recommendations of the Committee constituted under the Chairmanship of Smt. K. J. Udeshi for review of procedures relating to foreign exchange facilities to individuals – Residents/ NRIs and PIOs, it has been decided to allow deposits in FCNR(B) account in any permitted currency. For this purpose, 'Permitted currency' would mean a foreign currency which is freely convertible as defined in terms of Regulation 2(v) of FEMA 14/2000-RB Dated May3, 2000, as amended from time to time.

➤ **Processing and Settlement of Export related receipts facilitated by Online Payment Gateways-Enhancement of the value of transaction**

A.P. (DIR Series) Circular No.35 dated October 14, 2011

The RBI has decided to enhance the value per transaction from USD 500 to USD 3000 for export related remittances received through Online Payment Gateway Service Providers (OPGSPs). The revised directions will come into force with immediate effect.

CORPORATE LAWS



➤ Prosecution of directors

The MCA has issued Master Circular No. 1/2011No.3/57/2011/CL-II dated. 29.07.2011 stating that in spite of various rulings available on the question of “officers in default” who can be held liable for violations of a particular provision under the Companies Act, ROCs are arraying all the directors of the company for the violations without differentiating between officer in default and or others. Also, penal actions are also initiated against certain directors who are not charged with the responsibility in the following cases:

- For listed companies, SEBI requires nomination of certain directors designated as Independent Directors.
- For public sector undertakings, respective Government nominates directors.
- Various public sector financial institutions, financial institutions and banks having participation in equity of a company also nominate directors to the board of such companies.
- Directors nominated by the Government under section 408 of the Companies Act, 1956.

It is now clarified that ROCs should take extra care in examining the cases where above directors are also identified as officers-in-default. No such director as indicated above shall be held liable for any act of

omission or commission by the company or by any officer of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the board process. The board process includes meeting of any committee of the board and any information which the director was authorized to receive as director of the board as per the decision of the board.

All the RDs are advised to direct inspecting officers also to examine the board’s minutes of the company to arrive at a conclusion if independent director is also responsible for any violation of the provisions of Companies Act, 1956. It is further clarified that before taking penal action under the Companies Act, 1956 against the directors, the compliances listed in the above Circular should be verified by ROCs. This Circular also states that for default under sections 209(5), 209(6), 211 and 212 of the Act, the persons listed in this Circular shall be the ‘officers-in-default for the purpose of prosecution under these provisions. It is also clarified that there should be proper application of mind on the part of ROCs in deciding whether a person to be implicated is an ‘officer-in-default’ by examining the Annual Return, Form 32(s) and DIN-3 database available in the Registry. The guidelines of this Circular should be applied and wrongful prosecution should be avoided. Wherever the ROCs have doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to the RD who shall guide ROCs in the matter.

➤ Applicability of revised schedule VI format to companies Proposing IPO

The MCA has issued General Circular No. 62/2011 dated. 05.09.2011 referring to its earlier notification regarding revised schedule VI of the Companies Act, 1956 in relation to which clarification was sought that during the current year, the MCA has amended

the Schedule VI which is to take effect for accounts closing on 31 March 2012. During the financial year, in case companies intend to go for Initial Public Offer / Further Public Offer, they are expected to prepare accounts in the new Schedule VI format.

If previous figures are reclassified in accordance with new Schedule VI, this will pose enormous amount of administrative work and difficulty in making such changes besides making comparison with previous year unrealistic. Hence, the MCA has clarified that the presentation of financial statements for the limited purpose of IPO/FPO during the financial year 2011-12 may be made in the format of the pre-revised Schedule VI under the Companies Act, 1956. However, for period beyond 31 March 2012, they would prepare only in the new format as prescribed by the present Schedule VI of the Companies Act, 1956. Also, companies would ensure that it will prepare and file the annual accounts for the financial year 2011-12 as per revised Schedule VI of the Companies Act, 1956.

➤ **Amendments to issue of capital and disclosure requirements**

The SEBI has issued Notification No. LAD NRO/GN/2011-12/25/30309 dated. 23.09.2011 relating to rights issue of Indian Depository Receipts (IDRs) and some other minor amendments. It is provided that a listed issuer offering IDR through a rights issue shall satisfy the conditions specified in Chapter XA (which is inserted by this Notification) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 at the time of filing the offer document and that every listed issuer offering IDRs through a rights issue shall prepare the offer document in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI and regulation 106F and file the same with the SEBI and the stock exchanges on which the IDRs of the issuer are listed.

The Notification gives more details on applicability and eligibility to make an IDR issue, renunciation by an IDR holder, requirements for depository and record date, disclosures in the offer document and the addendum for the rights offering, filing of draft offer document and the addendum for rights offering, fast track issue, dispatch of abridged letter of offer and application form, period of subscription, pre-issue advertisement for rights issue, utilization of funds raised in rights issue, etc. The Notification also contains Part 'D' containing the requirements for disclosures in abridged prospectus, Schedule XXI containing Part A on disclosures in the addendum to the offer document for rights issue of IDRs and Part B on disclosures in abridged letter of offer for rights issue of IDRs.

POLICY WATCH

➤ **Finance ministry sets new performance benchmarks for government banks**

THE finance ministry has asked state-run banks to achieve new benchmarks that measure financial and functional efficiency to qualify for more cash injection in the coming years. State-run banks will have to improve three key measures of performance: savings and current deposit ratio, employee-branch ratio and profit per employee, as per finance ministry. These new targets are over and above the annual statement of intent the government signs with banks. Under the ministry guidelines, Current and Saving Account, or (CASA), deposits, which yield low-cost funds, should form 45% of the total bank deposits. The CASA deposit ratio stood at 41% for private banks in 2010-11 while it was 33% for public sector banks.

➤ **PSUs to prefer small enterprises**

STATE-run departments and Public Sector Undertakings (PSUs) will have to give preference to Micro and Small Enterprises (MSEs) for procurement of goods and services, as per the public procurement policy for MSEs that the government approved. The

policy, which the Union Cabinet cleared, has set an annual target of 20% procurement for the central government departments and PSUs from Mess Further, within the minimum limit of 20%, 4% of the orders should be placed to entrepreneurs from the Scheduled Castes and Scheduled Tribes. However, the minimum procurement limit would become mandatory only after three years. Until then, it would be voluntary upon the government departments and PSUs to procure from the Mess

➤ **TRAI proposes easier M&A rules**

IN order to enable consolidation in the sector, the Telecom Regulatory Authority of India proposed to ease up Merger and Acquisition (M & A) norms. The regulator stated that merged entity could own up to 25% of the spectrum in a given circle and it could have a combined market share of up to 60%. TRAI, in May 2010, had suggested bringing a spectrum cap of 14.4 Mhz on the merged entity. It also stated that combined market share should not be more than 30%. The regulator has now clarified, if the combined market share of the merged entity is below 35% then it can go through without any approvals. Mergers will also be allowed if the market share reaches up to 60% but subject to scrutiny by TRAI. This means that an operator such as Bharti Airtel which has market share of just over 20% can acquire any of the new players or even those with 10-15% market share.

➤ **Trade agreement with South Africa Customs Union by 2012**

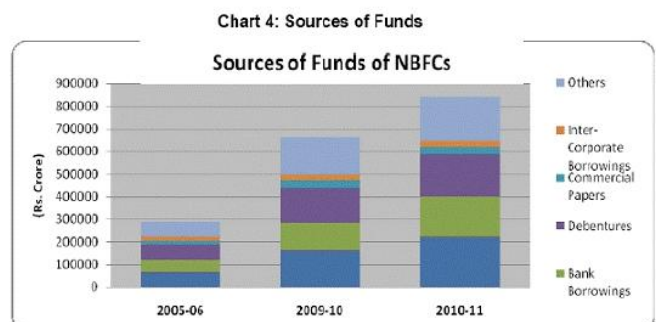
INDIA is expected to sign the much-awaited Preferential Trade Agreement (PTA) with South Africa Customs Union (SACU) by the first quarter of 2012, as both sides are currently engaged in active negotiations on seeking greater access of each others' markets and easier movement of professionals. SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. Since 2007, negotiations have been on over having a PTA with the grouping. So far, around eight rounds of

negotiations have taken place. It has to be mutually beneficial for both the sides, taking care of sensitivities on each side. Every country within the union has its own set of demands & likely to reach an agreement by the first quarter of 2012 or the second quarter. Under a PTA, the negotiating countries reduce their tariffs on a particular number of products from the level they maintain with countries that are not parties to the pact. Unlike free trade agreements (FTAs), a PTA does not slash or eliminate duties from a large number of tariff lines.

➤ **Cabinet Committee on Infrastructure approves 15 highway projects**

THE Cabinet Committee on Infrastructure approved 15 projects for highway construction of about 1,814 kilometres at an estimated cost of Rs 156.80 billion. The National Highways Authority of India (NHAI) will undertake 10 projects whereas implementation of the rest of the projects would be with the Rajasthan and Madhya Pradesh state agencies. While 14 projects would be taken up on BOT-Toll model, only 1 project will need government assistance through annuity payments. Most of the projects involve 4 laning of the existing stretches. In the current fiscal, NHAI has invited bids for a total of 4,653 kms and projects have been awarded for 3,051 kms so far. The government is also expediting work in Left Wing affected areas as well as North-East region, which is being implemented by the Road ministry. In the Left Wing areas, bids have been for 1,286 kms and work for executing 524 kms has already been awarded.

➤ **RBI allows banks, NBFCs to set up infra debt funds**



THE Reserve Bank of India (RBI) issued guidelines to allow banks and non-banking financial companies (NBFCs) to sponsor infrastructure debt funds (IDFs), to support long-term finance in infrastructure. The same is based on the parameters RBI had issued in September. IDFs may be set up either as mutual funds or NBFCs. According to the guidelines, NBFCs trying to set up IDFs should have been operational for at least five years, should have minimum net owned funds of Rs 3 billion and a capital adequacy ratio of 15%. Besides, its net non-performing assets should be less than three per cent of net advances. It should also have earned profits for the last three years.

➤ **Cabinet approves 51% in multi-brand & 100% in single-brand retail**

THE cabinet faced down opposition from within and outside to allow foreign retailers to own a 51% stake in the multi-brand retail sector, paving the way for global groups such as Wal-Mart, Carrefour and Tesco to open supermarkets in India. It also allowed 100% FDI in singlebrand retail, a decision that will encourage companies such as Sweden's home ware firm Ikea and clothing retailers Gap and H&M to set up shop. Until now, foreign firms were allowed 51% in single-brand retail, while being allowed to own 100% of back-end cash-and-carry operations that serve wholesalers.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ **Google to offer free websites to small enterprises**

TO bring Small and Medium Businesses (SMBs) in India to the online space, internet search giant Google launched an initiative to offer free website, domain and hosting services to SMBs. The initiative, dubbed India, Get Your Business Online, would provide Indian businesses tools and resources to establish a website, find new customers, and grow



their businesses. India is the nineteenth country where Google has launched the service. With this initiative, Google plans to introduce 500,000 SMBs to the online world in the next three years. The initiative aims to break the barriers that stop small businesses from going online by offering quick, easy and free tools to set up and host a website. The move has been widely cheered by the local advertising and online communities. Indian SMBs can log on to www.indiagetonline.in to register for the initiative and get their free domain name. They would, however, need to furnish an identification document, either a permanent account number, or a tax deduction account number or a corporate identification number.

➤ **Renault enters premium small car segment in India**

FRENCH car maker Renault used the platform provided by the first Indian Grand Prix, at the Buddh International Circuit, to launch its third passenger car for the Indian market. The new Renault Pulse will mark the company's entry into the premium small car segment and is expected to quickly widen its portfolio and draw in more buyers. The new Pulse has been built on the same V-platform that the Nissan Micra, the small car from Renault alliance's partner, was also based on. The Pulse has a redesigned front, but bears a striking resemblance to the Micra in every other department, including the interior trim. The Pulse will be commercially launched in January at the 2012 Auto Expo in New Delhi. Bookings will

open after the price announcement in January. The car will be launched with petrol and diesel engine options. The car will be manufactured in the Renault-Nissan alliance plant in Chennai. The plant has also commenced localized production of the engine. It is said to only be the third plant worldwide to manufacture this engine for Renault. Initial engine production capacity will be 150,000 units and this is expected to be ramped up to 300,000 units.

➤ **Partnership is the new norm in Pharmaceutical sector**



RANBAXY, the country's largest drug company, created a stir by challenging the patent on the world's highest revenue earning medicine, Lipitor, in the US. Domestic pharmaceutical majors are talking less of patent litigation and more of patent settlements. Companies such as Ranbaxy and Dr Reddy's were known for big acquisitions. Now, the focus is on smaller deals, catering to niche segments and markets. The fight seems to be giving way to partnerships and experts consider this the new way forward. Globally, pharma companies are under pressure from governments and taxpayers alike to reduce prices of drugs. There is a vast decline in research and development productivity, increased drug discovery costs and increased regulatory measures that companies need to contend with.

➤ **HDFC to enter education sector**





HOUSING finance major, HDFC Ltd, is planning to set up schools and provide allied services like vocational training or teachers' training programmes.

The company, which already offers educational loans through its subsidiary Credila Financial Services Private Ltd, will now provide financial support for setting up educational institutions or improving existing institutions. HDFC's strategy is to enter India's vast education sector by way of participating in the segment of schools. The long-term objective is to create a visible impact on school systems across the country by providing school management and other allied services, apart from setting up initial flagship schools.

➤ **Indirect tax collections rise 18.5% during April-October, 2011**



THE Finance Ministry announced an over 18% increase in indirect taxes collections during April-October. More importantly, the collection of excise duty has once again turned positive. The collection of excise duty, which is levied on manufactured goods at the factory gate, grew by over 5% in October. But, there are apprehensions over manufacturing slowing down, especially after the less than 2% industrial growth in September, 2011. Despite the weakening rupee, customs duty collection was disappointing in October. The only silver lining was that the overall growth rate for the first seven months was on target. Service tax is the only segment that is growing at a constant rate. With more and more services added and due to enforcement of measures, the collections grew at higher rate.

Statutory compliance calendar for the month of November 2011			
Due date	Statutory compliance under Act	particulars	Governing Authority
			
06/02/2011	Service Tax	Payment of monthly service tax for the month of October by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of October on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/02/2011	Income Tax	Deposit of Income Tax TCS and TDS deducted in October	Central Board of Direct Tax.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
	NBFC-D	Monthly return of exposure to capital markets in form NBS-6 by NBFC having total assets of ` 100 crore and above	Reserve Bank of India.
10/02/2011	Central Excise	Monthly central excise return in form ER-1/ER-2 by other than SSI	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM 1	Reserve Bank of India.
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	The securities and exchange board of india Act-1992
11/11/2011	ESIC	Filling half yearly ESIC return	The employees' state insurance Act-1948. Ministry of labour and employment.
15/11/2011	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of October (b) Monthly return in form 5 for employees joining Provident Fund during October along with declaration in form 2 furnished by the employees (c) Monthly return of Provident Fund in form 10 of employees leaving the service during October	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952
21/11/2011	ESIC	Payment of ESIC contribution for the month of October	The employees' state insurance Act-1948. Ministry of labour and employment.
25/11/2011	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952

AAR	Authority of Advance Rulings
ADR	American Depository Receipt
ALP	Arm's Length Price
AO	Assessing Officer
AP	Association of Persons
APA	Advance Pricing Agreement
ATM	Automated Teller Machine
AY	Assessment Year
BCD	Basic Customs Duty
BI	Body of Individuals
BP	Balance of Payments
CA	Chartered accountant
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CENVAT	Central Value Added Tax
Customs Act	Customs Act, 1962
CIT	Commissioner of Income Tax
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CD	Countervailing Duty
DDT	Dividend Distribution Tax
DTA	Domestic Tariff Area
ECB	External Commercial Borrowings
ESI	Employee's state insurance
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FY	Financial Year
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GI	Government of India
GST	Goods and Services Tax
HUF	Hindu Undivided Family
ICAI	Institute of chartered accountant
IFRS	International Financial Reporting Standard
IDR	Indian Depository Receipt
IIP	Index of Industrial Production
IRDA	Insurance Regulatory Development Authority
ITR	Income tax return

LCD	Liquid-crystal Display
MP	Madhya Pradesh
MP	Market price
MF	Mutual fund
MSME	Micro Small and Medium Enterprises
NBFC	Non Banking Finance Company
NHAI	National Highway Authority of India
NPS	National Pension Scheme
NRI	Nonresident in India
NABARD	National Bank for Agriculture and Rural Development
OEM	Original Equipment Manufacturer
OET Act	Odessa Entry Tax Act, 1999
PSU	Public Service Undertakings
P&L	Profit & loss
PF	Provident fund
POTR	Point of Taxation Rules
QE	Quantitative Easing
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REF	Renewable Energy Fund
REIT	Real Estate Investment Trust
Rules	Income-tax Rules, 1962
SA	Standard on Auditing
SAD	Special Additional Duty
SC	Scheduled Caste
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
ST	Scheduled Tribes
ST	Service Tax
STP	Software Technology Park
STR	Service Tax Rules
STCG	Short Term Capital Gain
TIN	Transaction identification number
TNNM	Transactional Net Margin Method
Tribunal	Income tax Appellate Tribunal
TDS	Tax Deducted at Source
TPO	Transfer Pricing Officer
TED	Terminal Excise Duty
VAT	Value Added Tax
VCC	Venture Capital Companies
VCF	Venture Capital Fund
WPI	Wholesale Price Index
WT	Wealth tax
WB	World bank

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