

Tax & Corporate law Bulletin

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JULY 2011

From the Editor's Desk...

Dear Reader,

Greetings for the season.

Welcome to July, Unending favour, prosperity and good health are our wishes for all are readers.

Let's have a look on some important updates of this month: Amendment in rule 114B of the Income-Tax rules, 1962, No Section 14A disallowance if assessee has no tax-free income, writing off of arrears of central excise duty and customs duty and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & Associates

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Table of contents

DIRECT TAX 1-4

RECENT JUDGEMENT



INDIRECT TAX 5-8

5-8

❖ SERVICE TAX

❖ CENTRAL EXCISE



FEMA 8-10

8-10

CORPORATE LAWS 11-12



INDIAN ECONOMY AT A GLANCE

POLICY WATCH 12-15

12-15



INDUSTRY WATCH & CORPORATE HIGHLIGHT 15-17

GLOSSARY

“Adapting swiftly to the
global business environment”



DIRECT TAX

➤ **Amendment in rule 114B of the Income-Tax rules, 1962 –Income-Tax(fifth amendment)rules, 2011**

Notification no. 27/2011 [F. No. 149/122/2010-SO (TPL)]/S.O. 1214(E)

The Central Board of Direct Taxes has amended the Rule 114B w.e.f. 1st day of July, 2011 for quoting the PAN in documents pertaining to specified transaction as follows:—

- In the Explanation (a), in clause (k), for the words “tour operator” the words “tour operator, or to an authorized person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)” shall be substituted.
- In clause (l) for the words “for issue of a credit card” the words “for issue of a credit or debit card” shall be substituted.
- After clause (p) and before the first proviso, the following clauses shall be inserted, namely:—“(q) payment of an amount aggregating fifty thousand rupees or more in a year as life insurance premium to an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938), (r) payment to a dealer,—
 - (I) An amount of five lakh rupees or more at any one time; or
 - (ii) Against a bill for an amount of five lakh rupees or more, for purchase of bullion or jewellery;”

➤ **Section 139 of the Income-Tax Act – return of income-exemption to specified persons from requirement of furnishing a return of income under section 139(1) for assessment year 2011-12**

Notification no. 36/2011 [F. NO. 142/09/2011(TPL)] / SO 1439(E), dated 23rd June, 2011

The Central Government has exempted the following class of persons, subject to the conditions specified hereinafter, from the requirement of furnishing a return of income u/s 139(1) for the assessment year 2011-12, namely:—

Class of Person

- An individual whose total income for the relevant assessment year does not exceed five lakh rupees and consists of only income chargeable to income-tax under the following head:—

- a) Salaries
- b) Income from other sources, by way of interest from a savings account in a bank, not exceeding ten thousand rupees.

Conditions

- The individual referred to in para 1:—
 - a) Has reported to his employer his Permanent Account Number (PAN);
 - b) Has reported to his employer, the incomes mentioned in sub-para (B) of para 1 and the employer has deducted the tax thereon;
 - c) Has received a certificate of tax deduction in Form 16 from his employer which mentions the PAN, details of income and the tax deducted at source and deposited to the credit of the Central Government;
 - d) Has discharged his total tax liability for the assessment year through tax deduction at source and its deposit by the employer to the Central Government;
 - e) Has no claim of refund of taxes due to him for the income of the assessment year; and
 - f) Has received salary from only one employer for the assessment year.
- The exemption from the requirement of furnishing a return of Income-Tax shall not be available where a notice under section 142(1) or section 148 or section 153A or section 153C of the Income-Tax Act has been issued for filing a return of income for the relevant assessment year.

- This notification shall come into force from the date of its publication in the Official Gazette.

➤ **Section 48 explanation (v) of the Income-Tax Act – computation of capital gains – notified cost inflation index for financial year 2011-12**

Notification no. 35/2011 [F.NO. 142/5/2011-TPL]/SO 1438(E), DT. 23rd June, 2011

The cost inflation index notified for the financial year 2011-12 for computation of capital gains is 785.

Financial year	Cost inflation index	Financial year	Cost inflation index
1981-1982	100	1997-1998	331
1982-1983	109	1998-1999	351
1983-1984	116	1999-2000	389
1984-1985	125	2000-2001	406
1985-1986	135	2001-2002	426
1986-1987	140	2002-2003	447
1987-1988	150	2003-2004	463
1988-1989	161	2004-2005	480
1989-1990	172	2005-2006	497
1990-1991	182	2006-2007	519
1991-1992	199	2007-2008	551
1992-1993	223	2008-2009	582
1993-1994	244	2009-2010	632
1994-1995	259	2010-2011	711
1995-1996	281	2011-2012	785

RECENT JUDGEMENTS

➤ **No Section 14A disallowance if assessee has no tax-free income**

Siva Industries & Holdings Ltd vs. ACIT (ITAT Chennai) dated July 1st, 2011

Section 14A uses the words “for the purpose of computing the total income under this Chapter expenditure incurred in relation to income which does not form part of the total income under this Act”. Thus for the applicability of s. 14A there must be (a) taxable income and (b) tax-free income. If either one is absent, s. 14A has no applicability. If it is assumed that s. 14A would apply even when the assessee does not have tax-free income, the expenditure would get disallowed year after year so long as the assessee held the shares and if he sold them and made a capital gain that would be taxed as well. This is not contemplated by s. 14A. If there is

no claim for tax-free income, there cannot be any disallowance u/s 14A (Walfort Share and Stock Brokers 326 ITR 1 (SC), Godrej & Boyce 328 ITR 81 (Bom) & Winsome Textile 319 ITR 204 (P&H) referred);

If the transaction of lending monies between the assessee and the AE is in foreign currency and the transaction is an international transaction, it has to be evaluated by applying the commercial principles applicable to international transaction. So, the PLR would have no applicability and the international rate being LIBOR has to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the AE. As the rate charged by the assessee (6%) was higher than the LIBOR (4.42) no adjustment could be made though the PLR was higher at 11.75%.

➤ **Despite Tax Avoidance, 100% Depreciation on Sale & Lease Back Allowable**

CIT vs. Cosmo Films Ltd (Delhi High Court) dated July 18th, 2011

Fact of the case

The assessee purchased equipment from the Haryana State Electricity Board (“HSEB”) which was already installed at the Board’s Thermal Power Station at Faridabad and immediately leased the equipment back to the HSEB. The assessee claimed 100% depreciation on the said equipment. The AO relied on McDowell 154 ITR 148 (SC) and disallowed depreciation on the ground that the transaction was not one of purchase and lease but was a pure financial and loan transaction. However, the CIT (A) & Tribunal upheld the claim on the ground that it was a genuine transaction of purchase and lease back

Held

The real intention of the parties in entering into the sale and lease agreement has to be gathered from the words in the agreement in a tangible and in an objective manner and not upon a hypothetical assessment of the supposed motive of the assessee to avoid tax. The lease agreement and invoice show that the ownership of the equipment was that of the

assessee. There was a transfer of title. The fact that the transaction was entered into by HSEB in order to raise finance for its day-to-day needs and that HSEB decided to go in for tapping the system of sale and lease back assets as a mode of raising finance at a lower cost does not bind the assessee. HSEB's intention in going in for the transaction cannot be transposed onto the assessee (Industrial Development Corporation of Orissa 268 ITR 130 (Ori), Rajasthan State Electricity Board 204 CTR 415 (Raj) and Gujarat Gas Company 308 ITR 243 (Guj) followed

- **Even gains on shares held for 30 days & less is STCG & not business profits**



Hitesh Satish Chandra Doshi vs. JCIT (ITAT Mumbai) dated 14 July 2011

Fact of the case

The assessee was engaged in the business of share trading and investments and offered income from sale of shares by way of STCG and LTCG. The AO treated the STCG as business profits on the ground that there was "systematic and regular course of share trading activity, the scale of activity was frequent and huge and the quantity purchased and sold are huge and repetitive". It was also held that the ratio of purchase to opening balance and sales to closing balance made the assessee a trader in shares and not investor in shares. On appeal, the CIT (A) held that the gain arising on shares held for more than 30 days was STCG while the gains on shares held for less than 30 days was assessable as "business profits". On cross appeals, HELD deciding in favour of the assessee:

Held

The CIT (A)'s view that the gains could be treated as either STCG or business profits depending on whether they had been held for a period of 30 days or shorter is not proper because the holding period is only one of the several criteria that has to be applied to determine whether the transaction is on trading or investment account. The principles that have to be applied are (a) the intention of the assessee at the time of purchase, (b) whether borrowed funds were used, (c) the frequency of purchase and sales, (d) the treatment in the books etc. No single criteria is conclusive and an overall view has to be taken (Associated Industrial Development 82 ITR 586 (SC) & Holck Larsen 160 ITR 67 (SC) followed); On facts, even the gains on shares held for 30 days and less had to be assessed as STCG and not business profits.

INDIRECT TAX

Service tax

- **Central government vide notification no.38/2011-ST, notification no.39/2011-ST & notification No.40/2011-ST all dated 14th June, 2011**

Central government has deferred the levy of service tax on taxable services provided by Government Railways to any person in relation to transport of goods by rail (Section 65(105) (zzzp)) to 1st January, 2012.

- **Central government vide notification no. 41/2011-ST dated 27th June, 2011**

Central government has amended Rule 7(c) of the Point of Taxation Rules, 2011 whereby Point of Taxation in respect of individual, proprietorship or partnership firms providing taxable services of "Consulting Engineer (Section 65(105)(g))" shall be the date on which payment is received.

Central Excise

➤ **Writing off of arrears of central excise duty and customs duty**

The power to write – off the arrears have been delegated to the competent authorities in the following manner:-

Competent Authority	Powers Delegated
Chief Commissioner of Customs & Central Excise/Central Excise/ Customs	<p>a. Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944.</p> <p>b. To write off irrecoverable amounts of Customs/Central Excise duties up to 15 lakh subject to a report to the Board.</p>
Commissioner of Customs & Central Excise / Commissioner of Customs / Commissioner of Central Excise	<p>a. Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944.</p> <p>b. To write off irrecoverable amount of Customs/Central Excise duties up to 10 lakh subject to a report to the Chief Commissioner.</p>

In respect of the interest amount, it is clarified that once duty involved is written off, the interest due thereon would get automatically written off.

(Circular No. 946/07/2011 dated June 1st, 2011).

➤ **Issues regarding levy of excise duty on branded readymade garments and made-up articles of textiles**

Clarification on the following issues is provided:-

- Applicability of mandatory levy of excise duty on school uniforms, uniforms for private security guards, companies, hotels, airlines, etc, and made-ups such as linens, towels bearing the name or logo of a hotel, restaurant or airlines etc. – It is clarified that such products would not merit treatment as “branded” products merely because the name of the school, institution or company or their logo is either printed, embroidered or etched on them. There is no nexus between such a name or logo and the product at the time of its sale which is essential ingredient in the definition of the term “brand name”. Unless such garments/made-ups also bear a brand name in addition to the name or logo such goods would not attract the excise duty.
- Applicability of mandatory levy of excise duty on made-ups such as blankets bearing the name of the manufacturer and supplied to the Ministry of Defence or its organisations – Mere affixing of name of the tailor or manufacturer would not constitute a brand name. Blankets supplied to the Defence establishment with affixing the name of the manufacturer on such goods would not, by itself, bring them within the ambit of branded goods.
- Determination of eligibility of the manufacturer or factory to the benefit of small scale exemption – A manufacturer or factory whose aggregate value of clearances for home consumption does not exceed 4 crore in the preceding financial year is eligible for full exemption on similar clearances for an amount not exceeding 1.5 crore in the current financial year. It has been clarified that certification by a Chartered Accountant or self certification by a manufacturer may be accepted for ascertaining the aggregate value of clearances.

(Circular No. 947/8/2011 –CX dated June 21st, 2011)

➤ **Exemption available to manufacturer of recorded smart cards**

Exemption is available to manufacturer of recorded smart cards to register only one premise from where centralized billing or accounting system is undertaken in respect of such goods manufactured by

different manufacturing units under the Central Excise Act.

(Notification No. 14/ 2011 - Central Excise (N.T.) dated June 3rd, 2011)

➤ **Exemption from levy of central excise**

Notification No. 4/2006 –CE dated March 1st, 2011 exempts certain goods from levy of excise duty. The scope of the said notification has been widened to also include,

- Colour positive unexposed cinematographic film in rolls of any size and length; and
- Colour negative unexposed cinematographic film in rolls of 400 feet and 1000 feet.

(Notification No. 33/2011 –CE dated June 25th, 2011)

INTERNATIONAL TAXATION

➤ **Transfer Pricing: Important Principles on comparability & +/-5% adjustment stated**

DCIT vs. Deloitte Consulting India Pvt. Limited (ITAT Hyderabad) dated July 30th, 2011

Fact / Questions to be raised

The Tribunal had to consider the following transfer pricing issues: (i) whether the use of multi-year data for determining ALP is permissible? (ii) Whether +/-5% adjustment is a “standard deduction”? (iii) Whether companies with minor differences can be treated as non-comparable? (iv) Whether a company with turnover 20 times that of the assessee can be said to be comparable? (v) Whether as the assessee was operating in a “risk-free environment”, adjustment for valuable intangibles and entrepreneurial risk borne by the comparables has to be made? (vi) Whether the TPO/AO need to demonstrate the assessee’s motive to shift profits outside India by manipulating prices charged in international transactions?

Held

- The expression “shall” in Rule 10B(4) makes it clear that it is mandatory to use the current year

data first and if any circumstances reveal an influence on the determination of ALP in relation to the transaction being compared than other data for period not more than two years prior to such financial year may be used. If the current year’s data of comparables is not available at the time of filing the ROI a fresh search of comparables during the transfer pricing proceedings is permissible;

- The +/-5% tolerance band in s. 92C is not a standard deduction. If the arithmetic mean falls within the tolerance band, then there should not be any ALP adjustment. If it exceeds the said tolerance band, ALP adjustment is not required to be computed after allowing the deduction at 5%. That means, actual working is to be taken for determining the ALP without giving deduction of 5%;
- The argument that a company with employee-cost of 1.38% of its revenue and with intangible property is not comparable because the assessee has an employee-cost of 52.12% and has no intangible property is not acceptable because the differences do not materially affect the price or profit earning. No two comparable companies can be replicas of each other. Rule 10B has to be applied not with technical rigor, but on a broader prospective;
- A company with 20 times turnover (Wipro BPO) more than the assessee is not at all comparable because the assessee is a pygmy compared to a giant. Accordingly Wipro BPO has to be excluded from the list of comparable companies;
- There are several factors such as market risks, environmental risk, entrepreneurial risk and functional risk etc., which affect this matter and which ultimately affect the results of the company. These factors make it impracticable to find out exact duplicate of the assessee as comparable. Some variation is bound to exist. The TPO had identified comparables whose functions were similar to the assessee by applying quantitative and qualitative filters to

eliminate differences between the assessee and the comparable to neutralize the risk factors. The assessee's argument that it is a "low end performer" operating in "risk-free environment" and that suitable adjustment should be made is not acceptable;

- The transfer pricing rules apply when one of the parties to the transaction is a non-resident, even if the transaction takes place within India. There is no need to find out the legislative intent behind the transfer pricing provision when the provisions were unambiguous. The existence of actual cross border transactions or motive to shift profits outside India or to evade taxes is not a pre-condition for transfer pricing provisions to apply.

➤ **DTAA Does Not Protect Tax Evaders. SIT Formed To Probe Black Money**



Ram Jethmalani vs. UOI (Supreme Court) dated July 5th, 2011

Fact of the case

Pursuant to a Writ Petition alleging inaction by the Government on the unearthing of unaccounted money, the Supreme Court set up a High Level Committee to act as a Special Investigation Team to supervise the investigation by the Government into black money. In the course of the ruling, the Court considered the impact of the Double taxation Avoidance Agreements, the Vienna Convention and the judgment in UOI vs. Azadi Bachao Andolan 263 ITR 706 (SC). The Court strongly disapproved of the stand taken by the Government ([click here](#)) that the names of the tax evaders was a "secret" and could not be revealed under the India-Germany DTAA.

Held

We have perused the said agreement with Germany. We are convinced that the said agreement, by itself, does not proscribe the disclosure of the relevant documents and details of the same, including the names of various bank account holders in Liechtenstein. In the first instance, we note that the names of the individuals are with respect to bank accounts in the Liechtenstein, which though populated by largely German speaking people, is an independent and sovereign nation-state. The agreement between Germany and India is with regard to various issues that crop up with respect to German and Indian citizens' liability to pay taxes to Germany and/or India.

It does not even remotely touch upon information regarding Indian citizens' bank accounts in Liechtenstein that Germany secures and shares that have no bearing upon the matters that are covered by the double taxation agreement between the two countries. In fact, the "information" that is referred to in Article 26 is that which is "necessary for carrying out the purposes of this agreement", i.e. the Indo-German DTAA. Therefore, the information sought does not fall within the ambit of this provision. It is disingenuous for the Union of India, under these circumstances, to repeatedly claim that it is unable to reveal the documents and names as sought by the Petitioners on the ground that the same is proscribed by the said agreement. It does not matter that Germany itself may have asked India to treat the information shared as being subject to the confidentiality and secrecy clause of the double taxation agreement.

It is for the Union of India, and the courts, in appropriate proceedings, to determine whether such information concerns matters that are covered by the double taxation agreement or not. In any event, we also proceed to examine the provisions of the double taxation agreement below, to also examine whether they proscribe the disclosure of such names, and other documents and information, even in the context of these instant proceedings".

FEMA

- **Remittance of assets by foreign nationals – Opening of Non-Resident[Ordinary](NRO)Accounts**

Circular No.: A.P. (DIR Series) Circular No.70 dated June 9th, 2011

Presently, foreign nationals employed in India holding valid visas are eligible to maintain resident accounts with an Authorised Dealer Category - I Bank (AD Category - I Bank) in India. The AD Category - I Banks are required to close the resident accounts of such foreign nationals on their leaving the country and transfer their assets to their accounts maintained abroad. Further, as per Foreign Exchange Management (Deposit) Regulations, 2000 when a person resident in India leaves India for a country (other than Nepal or Bhutan) for employment or business or vocation outside India or for any other purpose indicating her / his stay outside India for an uncertain period, her / his existing account should be designated as a Non-Resident [Ordinary](NRO) Account.

To enable the foreign nationals to collect their pending dues in India, the Reserve Bank of India (RBI) has now allowed such foreign nationals to redesignate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their pending bonafide dues, subject to the prescribed conditions.

- **Opening of Branch / Subsidiary / Joint Venture / Representative Office or Undertaking Investment abroad by Non-Banking Financial Companies (NBFCs)**



Circular No. DNBS (PD) CC. No. 222 /03.10.001/2010-11 dated June 14th, 2011

In terms of Regulation 7 of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, an Indian party requires prior approval of the concerned regulatory authorities both in India and abroad, to make an investment in an entity outside India engaged in financial services activities. RBI had vide its circular DNBS (PD).CC. No.173/03.10.01 /2009-10 dated May 3rd, 2010 advised that all NBFCs desirous of making any overseas investment must obtain "No Objection" (NOC) of the Department of Non-Banking Supervision of RBI before making such investment, from its Regional Office in whose jurisdiction the head office of the company is registered. A NOC in this regard will be issued by RBI to a NBFC, subject to the NBFC fulfilling the conditions enumerated in the NBFC (Opening of Branch/Subsidiary/Joint Venture/Representative Office or Undertaking Investment abroad by NBFCs) Directions, 2011 issued by RBI vide Notification No. DNBS (PD) 229/CGM (WE) /2011 dated June 14th, 2011. These directions are in addition to those prescribed by Foreign Exchange Department of RBI for opening of branches abroad or for investments in Joint Venture/Wholly Owned Subsidiary.

CORPORATE LAWS



- **Year of applicability for revised schedule VI requirements**

The MCA has issued Notification No. F. No. 2nd June, 2008-C.L-V clarifying that the MCA Notification No. 447(E) dated the 28th February, 2011 in relation to the revised Schedule VI applicability that the revised requirements shall come into force for the balance

sheet and profit and loss account to be prepared for the financial year commencing on or after 1 April, 2011.

➤ **Pre-funded instruments/electronic fund transfers**

instant EFT

The SEBI has issued Circular No. CIR/MIRSD/03/2011 dated June 9th, 2011 had earlier while specifying the mode of receipt and payment of funds permitted stock brokers to accept demand drafts from their clients. There were some issues faced in this process like the stock brokers were unable to maintain an audit trail of the funds so received, as the details of the name of the client and bank account-number are not mentioned on such instruments resulting in flow of third party funds/unidentified money, which affects the integrity of the securities market.

To address this, it has been decided that if the aggregate value of pre-funded instruments is Rs.50,000/- or more, per day per client, the stock brokers may accept the instruments only if they are accompanied by the name of the bank account holder and number of the bank account debited for the purpose, duly certified by the issuing bank. The mode of certification may include,

(a) Certificate from the issuing bank on its letterhead or on a plain paper with the seal of the issuing bank,

(b) Certified copy of the requisition slip (portion which is retained by the bank) to issue the instrument,

(c) Certified copy of the passbook/bank statement for the account debited to issue the instrument,

Authentication of the bank account-number debited and name of the account holder by the issuing bank on the reverse of the instrument.

Also, the brokers should maintain an audit trail of the funds received through electronic fund transfers to ensure that the funds are received from their clients only.

➤ **Participation by shareholders or directors in meetings through electronic mode**



The MCA has issued Circular No. 356/2011 dated 6th June, 2011 in relation to participation by a shareholder or a director of the company in meetings under the provisions of the Companies Act, 1956 through electronic mode. It is clarified that,

- It is not mandatory for companies to provide its directors the facility to attend meetings through video conferencing,
- In respect of shareholders meetings to be held during financial year 2011-12, video conferencing facility for shareholders is optional; thereafter, it is mandatory for all listed companies;
- Where the company opts to provide video conferencing facility, they have to comply with the procedures prescribed in the Circular no. 27/2011 & 28/2011 dated May 20th, 2011,
- The company is free to select video conferencing facility of any agency but the Chairman of the meeting and Secretary of the company has to ensure that there is a proper video conferencing equipment/facility which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting, and,
- In the case of e-voting in general meetings, the MCA is presently authorizing only National Security Depository Ltd. and Central Depository

Services (India) Ltd. as agencies for providing and supervising electronic platforms for electronic voting subject to the conditions that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi.

➤ Companies (dematerialization of certificates) rules, 2011

The MCA has issued Circular No. 17/143/2011-CL.V dated 6th June, 2011 on the above Rules' issuance so that all public Companies and their subsidiaries which have raised money by issue of shares, debentures, by accepting public deposits, stock, bond or any other financial instruments from public, other than from directors of the company, shall be required to issue and keep such share certificates, debenture certificates and certificates issued for receipt of deposits, stock, bond or any other financial instruments in dematerialized form only, in the manner prescribed in the Depositories Act, 1996 and regulation made thereunder. The MCA has invited comments /recommendations on this Rule 30th June, 2011.

➤ Amendment to companies DIN rules

The MCA has issued Notification No. F. NO. 2/1/2011-CL.V dated 2nd, June 2011 mandating certification of the DIN application form (DIN-1) by a Chartered Accountant or a Company Secretary or a Cost Accountant holding a certificate of practice under the relevant statute of their professional governing bodies. Similar requirement is introduced in relation to intimation of change in particulars of director to be given to the MCA (in Form DIN-4) where it is now also provided that the form can also be digitally signed by a Company Secretary in full time employment of the company. Consequent to these amendments, the Forms DIN-1 and DIN-4 are also substituted with new forms to reflect the amendment by this notification.

➤ Guidelines for declaring financial institutions as public financial institutions under Companies act, 1956

The MCA has issued General Circular 34/2011 dated. 2nd June, 2011 stating that in terms of section 4A(2) of the Companies Act, 1956 the Central Government is empowered to notify in the Official Gazette such institutions as it may think fit to be a public financial institution (PFI). In the past, the MCA was declaring an institution as a PFI if it meets any one of clauses (i) and (ii) of section 4A (2) of the Act. Now, the MCA has framed the following criteria for declaring any financial institution as a PFI.

- A company or corporation should be established under a special Act or the Companies Act being Central Act;
- Main business of the company should be industrial / infrastructural financing,
- The company must be in existence for at least three years and their financial statement should show that their income from industrial/infrastructural financing exceeds 50% of their income,
- The net-worth of the company should be 1,000 crore,
- The company is registered as infrastructure finance company (IFC) with the RBI or as a housing finance company (HFC) with the National Housing Bank,
- In the case of CPSUs/SPSUs, no restriction shall apply with respect to financing specific sector(s) and net-worth.

➤ The companies (cost audit report) rules, 2011

The MCA has issued Notification No. G.S.R. 430(E) dated June 3rd, 2011 notifying the Companies (Cost Audit Report) Rules, 2011 and which shall apply to every company in respect of which an audit of the cost records has been ordered by the Central Government under section 233B(1) of the Act. The rules specify the manner and mode of appointment of a cost auditor form of cost audit report, timeline for

submission of the cost audit report, rights of cost auditor in relation to the production of the accounting records, penalty for contravention of the rules, etc. One may refer to the above citation for further details.

POLICY WATCH

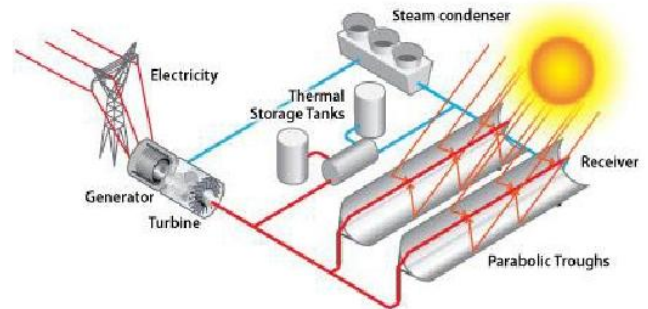


➤ **India-Malaysia economic agreement becomes operational from today The India-Malaysia Comprehensive Economic Cooperation Agreement**

CECA became operational from July 1st. The Agreement liberalizes trade in goods, services, investments and other areas of economic cooperation. It aims to boost bilateral trade to \$15 billion by 2015 from the current level of \$10 billion. The items, on which India has obtained market access from Malaysia, under the agreement, include basmati rice, mangoes, eggs, trucks, motorcycles and cotton garments.

These are all items of considerable export interest to India. At the same time, adequate protection has been provided by the Indian side for sensitive sectors such as agriculture, fisheries, textiles, chemicals and auto among others. India and Malaysia, under the services chapter of the agreement, have provided commercially meaningful commitments in sectors and modes of interest to each other which should result in enhanced services trade. The India-Malaysia CECA also facilitates cross-border investments between the two countries. It aims to promote investments and create a liberal, facilitative, transparent and competitive investment regime.

➤ **Eco clearance norms for solar thermal projects relaxed SOLAR thermal power developers such as Lanco Infratech, Reliance Power's Rajasthan Sun:**



Technique, and Godavari Power and Ispat can now go ahead with their projects without any fear of environmental delays. The Ministry of Environment & Forests has exempted entities implementing projects under the National Solar Mission from environment clearance requirement. But the developers will have to demonstrate that they are not using protected land and have applied for water permits. The Ministry of New & Renewable Energy had raised the issue of the State pollution control boards repeated requests to obtain prior environment clearance for solar thermal power projects. The pollution boards felt that these projects were covered by the Environmental Impact Assessment (EIA) provisions. According to developers, solar power is clean and environment friendly and the land used for the projects do not require much change or development. Further, most of the land is used for installing solar collectors only. There are no polluting emissions or discharges in the air or water bodies because of these projects.

➤ **India taps Poland for access to EU market India advised Poland, the east European country which holds the rotating European Union presidency**

To help resolve trade obstacles for Indian agricultural exports to 27 European Union (EU) countries as the two countries gear up to expand their economic and strategic ties. The EU can play an important role in resolving several of Indian market access issues with the EU including the issues with respect to arbitrary

Sanitary and Photo-Sanitary (SPS) standards and CCC (chemical residues) in grapes, honey, and rice, fish and fishery products. Indian agric-exports to the EU face a clutch of hurdles on the continent on account of use of some chemicals to preserve the products. The India-EU Broad-based Trade and Investment Agreement (BTIA) negotiations are in their final phase. Both the sides have intensified negotiations with a view to closing negotiations in 2011.

- **RBI to be regulator for MFIs** THE government has proposed to bring all Micro Finance Institutions (MFIs) under the ambit of, The Reserve Bank of India (RBI).



The central bank will have the powers to formulate policies for the sector and regulate it. The earlier Bill of 2007, which has lapsed, had sought to regulate only those MFIs not under the ambit of any law. So, banks and a few categories of Non-Banking Finance Companies (NBFCs) were kept outside the purview of the Bill. The revised Bill proposes to empower RBI to issue directions to MFIs on margin caps, tenure of loans, periodicity of repayment schedules, levy of processing fees, interest and life insurance premium, among others. It will also be allowed to specify the maximum annual percentage rate that can be charged by an MFI on the financial assistance granted to any client. Depending on the size of their operations and other relevant parameters, MFIs will be required to maintain the percentage of margin as may be specified by RBI from time to time. MFIs will have to convey to every borrower the annual percentage rate, comprising the annual interest rate, processing fees or any other charges or fees levied by them. The Bill says every micro lender must create

reserve funds for loans and refinance to other micro-finance companies.

- **RBI incentive to banks opening branches in rural areas** THE RBI announced that for each branch proposed to be opened in Tier 3 to Tier 6 centers ,

Of under-banked districts of under-banked States, a bank will get authorization to open a branch in a Tier 1 or Tier 2 centre. This incentive to banks comes as there is a continuing need for opening more branches in these States for ensuring more uniform spatial distribution. Further, the RBI requires banks to now open at least 25% of the branches under the annual branch expansion plan in un-banked rural centers. In lieu of this it would now not be mandatory to open at least a third of the total number of branches proposed to be opened in Tier 3 to Tier 6 centres of under-banked States, as per the RBI notification.

- **CA certification made mandatory for XBRL filing by companies** Chartered accountants in the business of auditing company balance sheets can reap an extra

Bonanza soon. For, companies will now have to get their financial statements filed in XBRL format with the Ministry of Corporate Affairs (MCA) compulsorily certified by statutory auditors. The MCA's new directive applies to all listed companies and also unlisted firms with a paid-up capital of at least Rs 50 million or those with turnover of Rs 1 billion and above. Theoretically, that would cover about 40,000 firms, who even if they pay Rs 50,000 each (for XBRL certification) would generate professional fees of Rs 2 billion to chartered accountants. For the year 2010-11, where books are closed on March 31st, 2011, all listed companies in India and their Indian subsidiaries, all companies having paid-up capital of Rs 50 million and above and all companies having turnover of Rs 1 billion and above are required to file XBRL format information by September 30. Exceptions have been made for banking, insurance and power companies, and NBFCs.

Every company to which The Companies (Cost Accounting Records) Rules, 2011 apply, including all units and branches thereof shall, in respect of each of its financial year commencing on or after the 1st day of April, 2011, keep cost records.

Records to be maintained on regular basis and in such manner that per unit cost can be calculated or every financial year on monthly/quarterly/half-yearly/annual basis.

Records to be maintained in accordance with cost accounting standards and principles issued by ICWAI.

Cost records to be reconciled with audited financial statements.

All Cost records and statements to be maintained for at least 8 years

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ Railway revenue earnings up by 12.15% during April-June 2011

Indian Railways registered an increase of 12.15% in its earnings for the first quarter of the current fiscal from Rs 247.56 billion compared to Rs. 220.74 billion during the same period last year. It registered a jump of 12.61% in the total goods earnings which have gone up from Rs. 149.288 billion last year to Rs. 168.117 billion during April-June in the current financial year. The total passenger revenue earnings during first three months of the financial year 2011-12 were Rs. 68.41 billion compared to Rs. 61.9 billion during the same period last year, registering an increase of 10.52%. The revenue earnings from other coaching amounted to Rs. 6.94 billion during April-June 2011 compared to Rs. 6.26 billion during the same period last year, an increase of 10.96%.

➤ Matheson K-Air India to invest \$100 million for air separation plant in Pune

Matheson K-Air India Private Limited (MKI) plans to construct a 200 ton per day air separation plant unit (ASU) in Chakan near Pune. The plant is

expected to be up by December 2012, and produce liquid oxygen, liquid nitrogen and liquid argon for delivery within a 300 kilometer radius. The company states it will invest \$100 Million over the next five years to expand its business and supply industrial gases throughout India. It also wants to set up gas fill plants and distribution centers in some cities. Matheson K-Air India is a joint venture between America's Matheson Tri-Gas, Inc., and K-Air India Private Limited, an Indian corporation that was established in March 2010. Matheson is a subsidiary of Taiyo Nippon Sanso Corporation Group, among the largest suppliers of industrial, specialty, and electronics gases in the world. The Pune plant will improve availability and reliability of gases supply that MKI can supply locally and make K-Air India Pvt. Ltd competitive.

➤ Kirloskar Oil inks agreement with Daihatsu PUNE-based manufacturer of diesel engines

Kirloskar Oil Engines Ltd (KOEL) has entered into a licence agreement with Daihatsu Diesel Manufacturing Co Ltd, Japan, for the manufacture and supply of their diesel engines in India. KOEL, and Daihatsu Diesel Mfg Co Ltd, signed the agreement recently in Japan. Under the agreement, KOEL will make Daihatsu engines in the 440-2560 KW range, and cater to the requirement of Propulsion and Auxiliary Power (DG Sets) for commercial ships. These will be manufactured at the company's facility in Nashik where its large engines 1800-6300 KVA are made.

➤ Domestic car sales up 1.6%, bikes 15% in June Domestic passenger car sales grew by 1.62% to 143,370 units in June, 2011, from 141,087 units in the same month last year:-

Motorcycle sales in the country grew by 14.97% during the month to 825,323 units from 717,859 units in the corresponding month last year. The total two-wheeler sale has increased by 14.59% to 1,071,425 units last month from 934,975 units in June, 2010. Sales of commercial vehicles jumped by 17.83% to 62,009 units in the month under review from 52,627 units in the year-ago period. Total sales of vehicles

across categories registered a growth of 12.84% to 1,362,984 units in June, as against 1,207,934 units in the same month last year.

➤ **Real estate PE funds raked in \$11 billion in April-June**

Real estate-focused Private Equity (PE) funds raised \$11.2 billion from investors in the April-June period of 2011, 26% more than in the January-March quarter. 18 PE funds dedicated to the real estate raised an aggregate \$11.2 billion in the second quarter of 2011 as compared to \$8.9 billion in the previous quarter. The June quarter mop-up was much higher than the \$7.1 billion raised in the fourth quarter of 2010. As deal levels would increase more distributions occur, investors will have more capital available to make new commitments, which is likely to further improve fund raising. This will be a gradual improvement, and with the market remaining extremely overcrowded, many firms will still be facing long periods in market and others will be forced to abandon their fund raising efforts. In terms of geography, five PE firms in Asia raked in \$1.4 billion, while three Europe-focused funds garnered \$1.2 billion.



➤ **ONGC Videsh to focus on assets valuing \$4-6 billion**

Currently, the company has acquired assets up to \$2 billion. The Government has asked ONGC to focus more on acquiring big properties (\$4-6 billion) instead of looking for a couple of smaller properties. They would be looking for properties which offer

exploration risks as well as rewards. OVL is focusing on oil sands in Canada, or more investments in Kazakhstan and West Asian countries, as well as Venezuela. In 2010-11, OVL achieved its highest ever production of oil and gas at 9.448 million tonnes of oil and oil equivalent of gas, a 7% increase from the previous year. Of this, crude oil production was 6.76 million tonnes and gas production was 2.7 billion cubic metres.

➤ **JB Chemicals sells Russia biz to J&J for Rs 9.39 billion**

Mumbai-based JB Chemicals & Pharmaceuticals Ltd (JBCPL) has completed Rs 9.39 billion deals to sell its over-the-counter (OTC) business in Russia and Commonwealth of Independent States (CIS) countries to Johnson & Johnson arm Cilag GmbH International. The company has received nearly Rs 7.38 billion and an agreed portion of consideration in an escrow account. The Russia CIS OTC business along with OTC brands now vests in Cilag. The company would now supply the acquired products to Cilag for these markets. The Russian subsidiary of the company has also completed the sale of its OTC business to Johnson and Johnson LLC for \$35 million.

➤ **SAAS expected to grow by 20.7% this year**



To grow by 20.7% this year amounting close to Rs 5.38 billion as compared to 2010 where it was close to Rs 4.45 billion. SAAS refers to software that is owned, managed and delivered by a provider from a

remote location. Customers pay for the service based on their usage. Although SAAS is only a variation of cloud computing which includes services like platform as a service and infrastructure as service, SAAS has led the growth of cloud computing. 75% of SAAS delivery could be regarded as cloud services which are set to exceed 90% by 2015 with SAAS becoming mature. Customer relationship management (CRM) is the largest market for SAAS expected to reach Rs1.69 billion in 2011 to represent 32 % of total CRM market.

- **GMR Infrastructure raises \$131 million from PE firms** GMR Infrastructure's airport arm GMR Airport Holdings has raised \$131 million via an issue of Compulsorily convertible preference shares.



A clutch of private equity players Standard Chartered Private Equity (Mauritius) III, JM Financial Old Lane India Corporate Opportunities Fund I, JM Financial Trustee Company Private, JM Financial Products Limited and Build India Capital Advisors have subscribed to the preference shares. The fresh infusion will help the company to fund its airport ventures. The Bangalore-based infrastructure major has raised \$200 million from Macquarie SBI Infrastructure Fund earlier this year. The private equity funding was also by way of compulsory convertible preference shares. GMR Airport Holdings operates two airports in India (Delhi and Hyderabad) and one in Turkey (Istanbul Sabiha Gokcen International Airport at Istanbul). The airport division contributes 46% revenue to GMR Infrastructure.

- **Vedanta buys 11% stake in Cairn for \$1.5 billion**

Vedanta bought an 11% stake at Rs 331 a share worth about \$1.5 billion in Cairn India through block deals in the market. Vedanta bought the stake from Malaysia's national oil corporation Petronas, which also sold its remaining nearly 4% stake to some foreign portfolio investors. Vedanta's share purchase in Cairn India will help it gain a majority stake in the company. Vedanta's deal to buy Cairn's India assets, which would be the biggest deal in the Indian oil sector, is widely seen as a litmus test for foreign investment into India.





- **Japan firm to draft water master plan for Delhi**

The Delhi government informed Delhi high court that it has decided to rope in a Japanese company to prepare a master plan for tackling the water crisis in the national capital. Delhi Jal Board (DJB) submitted before a bench of Chief Justice that its officials were in consultation with Japan International Co-operation Agency (JICA) for preparing the master plan, and that this would be ready by June this year as JICA has already prepared a set of suggestions. According to the DJB, the plan will provide infrastructure in existing and new areas of the city.

- **NOVELIS to set up \$15.8 million casting line in Italy** ADITYA Birla group outfit NOVELIS Inc has confirmed that it will set up a continuous casting

Line at its unit at Pieve Emanuele in Italy for \$15.8 million. Accordingly, Novelis release the new line fifth at the unit that will recycle painted scrap aluminum into the metal needed to produce rolled aluminum sheet. This is the largest single investment in Atlanta-headquartered company's Italian facilities in 12 years. The painted scrap generated during the production processes in Novelis' Italian operations and other low-grade used aluminum from external sources will be recycled and rolled. Building of the proposed line will be completed by the end of 2012.

Statutory compliance calendar for the month of July 2011

Due date	Statutory compliance under Act	Particulars	Governing Authority
			
06/07/2011	Service Tax	Payment of monthly service tax for the month of June by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of June on goods by assesses other than SSI units and quarterly payment of excise by SSI electronically	Central Board of Excise and Custom
07/07/2011	Income-Tax	Deposit of Income-Tax TCS and TDS deducted in June	Central Board of Direct Tax.
	SEBI	Quarterly report for grievances of beneficial owners related to depository services to depositories	The securities and exchange board of India Act-1992
	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.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
10/07/2011	Central Excise	(a) Monthly central excise return in form ER-1/ER-2 by other than SSI. (b) Quarterly return by SSI in form ER-3 (c) Quarterly return by assesses paying 1%/2% excise duty and not manufacturing any other goods in form ER-8.	Central Board of Excise and Custom
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	Central Board of Excise and Custom
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
	NBFC-D	Quarterly submission of Monetary and Supervisory return in form NBS-5 by NBFC having public deposits of ` 20 crore and above as per last audited balance sheet	Reserve Bank of India.
15/07/2011	Income-Tax	(a) Income-Tax TDS/TCS statement in form 24Q/26Q/27EQ (Other than Government) for the quarter April to June (b) Return in form 27Q in respect of TDS from interest, dividend or any other sum payable to non-residents for the quarter April to June	Central Board of Direct Tax.

	Provident Fund	(a) Payment of dues of Provident Fund for June (b) Monthly return in form 5 for employees joining Provident Fund during previous month 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 June.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
	SEBI	Quarterly Corporate Governance Compliance Certificate by listed companies to stock exchanges under clause 49(VI) (ii) of Listing Agreement.	The securities and exchange board of India Act-1992
	Central Excise – Dealers	First stage dealer and second stage dealer to submit quarterly return	Central Board of Excise and Custom
	NBFC-D	(a) Quarterly Return of Statutory Liquid Assets in form NBS-3 by NBFC (NBS-3A by RNBFC) only if they are accepting public deposits (b) Quarterly report of frauds involving ` one lakh or more in form FMR-3 and frauds outstanding in form FMR-2.	Reserve Bank of India.
21/07/2011	SEBI	Quarterly return of shareholding pattern to stock exchange as per clause 35 of Listing Agreement	The securities and exchange board of India Act-1992
	ESIC	Payment of ESIC contribution for the month of June	The employees' state insurance Act-1948. Ministry of labour and employment.
25/07/2011	Provident Fund	Contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution for the month of June	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
30/07/2011	Income-Tax	(a) Quarterly certificate of tax deducted from income other than salary in form 16A (other than Government). (b) Quarterly certificate of TCS (Tax Collected at source) in form 27D	Central Board of Direct Tax.
31/07/2011	Income-Tax	(a) Annual return of income (form ITR-1 to ITR-7) and wealth (form BA) for individuals, firms etc. whose accounts are not required to be audited u/s 44AB for A/Y 2014-15 (b) Quarterly return of non-deduction of tax from interest by a banking company in form 26QAA (c) Quarterly statement of TDS and TCS by office of the Government	Central Board of Direct Tax.
	SEBI	Audit report to stock exchange of reconciliation of total admitted capital with depositories and total issued and listed capital for the quarter April to June.	The securities and exchange board of India Act-1992
	NBFC-ND	Quarterly return by Non-deposit taking NBFCs with asset size of ` 50 crore and more but less than ` 100 crore in form annexed to RBI circular dated 24-9-2008.	Reserve Bank of India.

Glossary

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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- Succession Planning.
- Strategic Decision Appraisal
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- Statutory Audit including Tax Audit & VAT Audit
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- Secretarial Audit.

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