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JULY 2013

From the Editor's Desk...

Dear Reader,

Greetings for the season.

May God keep you away from harm and sadness in upcoming month. May you have no problems and tensions this month.

Let's have a look on some important updates of this month: Discount on issue of Employee Stock Options is a tax deductible expense, Royalty received towards license fee for use of trademark not liable to VAT, Realization and Repatriation period for units in SEZ and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

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“Adapting swiftly to the global business environment”



DIRECT TAX

RECENT JUDGEMENTS

➤ Discount on issue of Employee Stock Options is a tax deductible expense

Biocon Limited v. DCIT, LTU (ITAT - SB) [TS-322-ITAT-2013(Bang)]

Facts

- Biocon Limited (taxpayer) is engaged in the manufacture of Enzymes and Pharmaceutical ingredients.
- Taxpayer floated an Employee Stock Options Plan (ESOP) and a trust was set up under the name and style of “Biocon India Limited Employees Welfare Trust”
- The taxpayer claimed deduction of Employee compensation cost representing discount on issue of ESOP (i.e. difference between the offer price and market price of shares) under Section 37 of the Income-tax Act, 1961 (the Act).
- The details of the ESOP scheme are as follows:

Face value of shares	Rs. 10/ share
Exercise price under ESOP	Rs. 10/ share
Market price of shares on date of grant	Rs. 919/ share
Vesting period	4 years
No. of options granted	71,510
Total discount under the scheme	Rs. 6.50 Crores
Deduction claimed during the year	Rs. 3.38 Crores

- The Assessing Officer (AO) disallowed the claim of ESOP expenditure in the original assessment order on the ground that there was no specific provision entitling the taxpayer to claim deduction. AO held that the Securities and Exchange Board of India (Employee Stock

Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (SEBI Guidelines), on which the taxpayer had placed strong reliance in support of the deduction, would not apply as the same cannot supersede the taxing principles.

- Being aggrieved by the order of the lower authorities, the taxpayer filed an appeal before the Income Tax Appellate Tribunal (the Tribunal).
- Since there were contrary decisions on this issue, the Division Bench referred the matter to the Hon’ble President with a request to constitute a Special Bench to reconcile the cleavage of opinion.

Issue before the Special Bench of the Bangalore Tribunal

- Whether discount on issue of Employee Stock Options is allowable as deduction in computing the income under the head profits and gains of business?

Observations and Ruling of the Special Bench

- The Tribunal divided the larger question into three parts and addressed the same as under:
- **Part 1:** Whether any deduction of such discount is allowable?
 - a) The primary object of issuing ESOP is not to raise share capital but to earn profit by securing/ encouraging dedicated employees to continue in employment during the vesting period. The substance of this transaction is disbursing compensation to the employees and it is a substitute to giving a direct incentive in cash.
 - b) ESOP is simply one of the modes for compensating employees and it cannot be considered as “short capital receipt” or capital expenditure.

- c) Taxpayer's obligation to issue shares at a discounted price is a part of the employee compensation/ remuneration package and as such it is revenue expenditure under the Act.
- d) Under section 43 read with section 37(1) of the Act, the position which emerges is that it is not only actual pay out of expenditure but also incurrance of the expenditure which entails deduction under the Act.
- e) Mere fact that the quantification is not precisely possible at the time of incurring the liability would not make an ascertained liability a contingent liability.
- f) Tribunal held that discount - i) is an expenditure; ii) such expenditure is on account of an ascertained (not contingent) liability; and iii) it cannot be treated as a "short capital receipt". Therefore, discount under the ESOP scheme is an allowable deduction.
- **Part 2:** If yes, then when and how much?
 - a) The liability is neither incurred at the stage of the grant of options nor when such options are exercised.
 - b) The company incurs liability to issue shares at the discounted premium only during the vesting period.
 - c) As per SEBI Guidelines, in the case of non-graded vesting, the amount shall be amortized on a straight-line basis over the vesting period.
 - d) In the case of graded vesting, the amount of such deduction is to be found out as per the terms of the ESOP scheme by considering the period and percentage of vesting during such period.
- **Part 3:** Subsequent adjustment to discount
 - a) The amount of discount claimed as deduction earlier in respect of unvested/ lapsing options

has to be reversed and taxed as income at the time of investing/ lapsing.

- b) Adjustment to the income is called for at the time of exercise of option by the amount of difference, if any, in the amount of discount calculated with reference the market price at the time of grant of option and the market price at the time of exercise of option.
- c) Inferences from Accounting principle/ SEBI Guidelines could be drawn only when such principles/ guidelines are in line with tax principles.

Conclusion

- Discount on issue of ESOP is allowable as a tax deductible expense
- Deduction is allowable through the vesting period of the scheme and such quantum is to be determined based on the percentage of vesting.
- At the time of exercising the option, appropriate adjustment, if any, is to be made for the amount of discount calculated with reference to the market price prevailing at the time of exercise of option.

GLOBAL EMPLOYER SERVICES

- **Certificate of Coverage will now be issued by Regional/ Sub-Regional Provident Fund Offices**

Notification No. IWU7 (15)2011/Gen (Software)/7848 dated July 25th, 2013 issued by EPFO

Background

- India has signed Social Security Agreements (SSAs) with various countries. Under the detachment provisions contained in these SSAs, employees posted to these countries and meeting the prescribed criteria are exempted from contributing to social security provided they are covered under the social security programme in India.

- The 'Certificate of Coverage' (COC) which is also known as a 'Detachment Certificate' issued by the Employees Provident Fund Organisation (EPFO) enables such posted employees to avail the benefit of detachment. The EPFO has, through an internal circular dated July 25th, 2013, modified the process of issuance of COC.

Amendments in the process of issuance of Certificate of Coverage's



- Prior to the issue of this circular, the issuance of COC entailed a multi-step process as detailed below.
- As a first step, the employer and the employee had to submit an application to the concerned regional/ sub regional Provident Fund (PF) office where the employer is registered.
- The regional /sub-regional offices after verifying the records and scrutinizing the applications, forward the same to the Head Office at Delhi for issuance of COC.
- The Head Office then issues the COC and sends it to the regional office. The COC is then handed over to the employees through their employers by the regional PF office.
- The internal circular lays down a detailed process to be followed by the regional PF offices. Under the new process, the joint application for issuance of COCs will now be processed by the concerned field offices. For this purpose, application software for issue of

COCs by field offices has been developed. The requirement for sending the applications to Head Office for issuance of COC has been done away with.

- It has also been clarified that from August 15th, 2013 onwards, the COCs shall be issued by the concerned regional offices/ sub regional offices and no applications for COCs shall be forwarded to the Head Office after the end of July 2013.
- The field offices shall issue the COCs, which shall be sent through speed post to the employer for being handed over to the employee. A suitable monitoring process would be in place to ensure that the COCs are issued within a maximum period of one week.

Comments

Hitherto, the issue of COCs by the EPFO was a time consuming process, and there was no time limit specified for issue of the COCs. Further the delay in obtaining COCs was a cause of concern to the companies since this could result in mandatory contributions to the overseas social security till the date of submission of such COCs in certain countries.

The internal clarification streamlining the process of issue of COC is definitely a positive step since it will significantly reduce the time required to obtain a COC. Providing an indicative timeline for issue of COCs (Maximum of one week) is a positive measure.

INDIRECT TAX

Service Tax

➤ Synopsis of notifications, Circulars & Letters

Central Government vide Notification No.11/2013-ST dated 13th June, 2013 has amended the Notification No. 6/2013-ST dated April 18th, 2013 which was in relation to exemption granted to the taxable services provided or agreed to be provided against a Focus Market Scheme duty credit script issued to an

exporter by the Regional Authority subject to fulfilment in the said Notification.

Commissioner of Service Tax-I Mumbai vide Trade Notice No. 4/13-14-ST-I dated May 27th, 2013 has appointed Asst/Dy. Commissioner of Service Tax (Tech), Mumbai as a Designated Authority within the meaning of Section 105(1)(c) of the Finance Act, 2013. The declarant under Voluntary Encouragement Compliance Scheme (VCES), 2013 can file the declaration to the notified designated authority which is Assistant/Deputy Commissioner of Service Tax (Technical) Room No. 303, New Central Excise Building, 115, Maharshi Karve Road, Church gate, Mumbai-400 020. Tel. Nos. 022-22034421 and 022-22034425.

RECENT JUDGEMENT

➤ Royalty received towards license fee for use of trademark not liable to VAT

Background

- The Appellant Company (Appellant) is engaged in the marketing, trading, export and import of jewelry, gold ornaments, diamond ornaments under the brand name of 'Malabar Gold'. The Appellant was a registered dealer under the Kerala VAT (KVAT) and also registered with the Service Tax Department for provision of 'Franchise Service'.
- The Appellant was issued with a notice from the Commercial Taxes Department for failure to pay VAT on the amount of royalty received from the Franchisees for use of Trade Mark. The appellant had paid service tax on the said amounts under the taxable service category of 'Franchise Service'.
- The Appellant filed a writ petition before the Single judge against the levy of VAT on the royalty. The Hon'ble Single Judge vide order rejected the contentions of the Appellant and held that VAT was payable on the royalty irrespective of the fact that service tax was paid on same transaction.

Petitioner's contentions

- The entire issue was covered in favour of the Appellant by the Supreme Court's decision in BSNL [2006(3) SCC 1].
- The nature of the transaction is a franchise agreement which stipulates that the Franchisees can store and sell products and the show room should have the brand name 'Malabar Gold' as per design approved by the Appellant. The royalty being paid by the Franchisees is a percentage of the annual net profit of the Franchisees.
- In the light of the decision of the Supreme Court in I magic Creative [2008 (9) STR 337 S.C] the payment of service tax as well as VAT are mutually exclusive and once the transaction is covered under the relevant provision for payment of service tax, it cannot be subjected to levy of VAT/ sales tax again.
- There is no absolute transfer of Trade Mark to the Franchisees in the instant transaction. The agreement does not permit the franchisees to further transfer the Trade Mark to a third party to the exclusion of the Appellant. Once the Appellant decides to withdraw the permission granted to the franchisees to use the trade mark, the franchisees have to desist from using the trade mark.
- The present transaction involved the grant of a mere license to use the trade mark and the franchisee has no legal right to use the same to the exclusion of the Appellant.
- A trade mark is not an item specifically included among 'intangible goods' mentioned therein in Serial No. 68 of the Third Schedule to the Kerala VAT Act, 2003 as the same is confined to copyright, patent and REP license. The attempt by the Department to use the residuary entry to include Trade Marks is not justified.

- The decisions of the High Court in Mechanical Assembly [2006 (144) STC 536], which held that permanent transfer of a know-how through technical personnel would satisfy the definition of sale; and Jojo Frozen Foods [2009 (24) VST 327] and Kareem Foods Pvt. Ltd. [2009 (24) VST 333] which held that royalty received towards use of trade mark were subject to sales tax are distinguishable on facts and were rendered at a time before the introduction of 'Franchise service' w.e.f July 1st, 2003 for purpose of service tax.

Respondent's contentions

- The writ appeals filed by the Commissioner of Central Excise and Customs are not maintainable as they are not aggrieved parties nor have any directions been issued against them.
- The decisions of the High Court in Mechanical Assembly, Jojo Frozen Foods and Kareem Foods will show that the transactions by way of transfer of know-how as well as right to use the Trade Mark were found to be covered by the provisions of the Kerala General Sales Tax Act.
- The entry "intangible properties" would cover a Trade Mark by the application of the principle of ejusdem generis.
- The decision of the single Judge was without any reproach as in case the Appellant had any grievance relating to liability to service tax; it should be taken up with appropriate authorities.

Observations of Hon'ble High Court

- The decision in Mechanical Assembly was distinguishable as being a case of outright transfer of know-how itself and not a case of transfer of the use of know-how.
- The Hon'ble Supreme Court has pointed out that even after the introduction of separate categories in respect of 'deemed sales' under

Article 366 (29A) of the Constitution, the meaning of the word 'goods' was not altered.

- As per the principles laid down by the Supreme Court in 20th Century Finance Corporation [(2000) 6 SCC 121], the delivery of goods is not necessary for effecting transfer of right to use the goods, but the goods must be deliverable and delivered at some stage. Further, for a transferee to obtain a legal right, the transfer has to be to the exclusion of the transferor.
- In light of the above test, with reference to the franchisee agreement, only a license to use the Trade Mark is granted and the transfer of its use is not to the exclusion of the transferor i.e. the Appellant. In the present case, the Appellant retains the right to transfer the same to others also.
- The decision of the Supreme Court in Imagic Creative, held that the 'payment of service tax as also the VAT are mutually exclusive. Therefore, VAT/ service tax should be held applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contra-distinguished from an indivisible contract'. The effective control on the use of Trade Mark is with the Appellant during the term of the agreement.
- Thus the transaction under the agreement is a taxable service and the taxable event is the service rendered by the Appellant. Any service provided or to be provided to a franchisee will come within the purview of the taxable service of 'Franchise Service' under service tax.

Final Order

- Writ appeals allowed, reversing the decision of the Single Judge after holding that the franchise agreement will not attract the levy of VAT under the provisions of KVAT

INTERNATIONAL TAX ALERTS



➤ **Only non-commercial activities specifically assigned by the head office not to be taxable in India**

Wellinx Inc. v. ADIT (ITA No. 1651 & 1672/HYD/2011) dated June 28th, 2013

Facts

- Wellinx Inc., USA is engaged in the business of medical transcription and software development related to health care.
- Wellinx Inc. had established a branch office (the taxpayer) in Hyderabad, India which commenced its operations of software development, software product enhancements, customer care and medical transcription services of in house health care IT products during the assessment year 2006-07.
- The taxpayer filed its return of income in India declaring a loss. The taxpayer's contended that it was providing specified services to its head office and as per Article 7(3) of the Double-Tax Avoidance Agreement between India and USA (DTAA) in determining the profits of the Permanent Establishment (PE) no account shall be taken for amounts charged for specific services performed by the branch vis-a-vis head office. Hence the receipts from the head office (HO) shall not be taxable in India as per Article 7(3) of the DTAA.

- The Assessing Officer (AO) held that the taxpayer had a PE in India as per Article 5(1) of the DTAA. Referring to Article 7(2) of the DTAA, the AO estimated taxpayer's income at cost plus 15% mark-up.
- The CIT (A) held that the intent of the DTAA in view of Article 7(3) is to distinguish between the two kinds of outsourcing activities i.e. commercial activities and non-commercial activities. Accordingly only such income as arising on account of activities being non-commercial in nature shall not be taxable in India as per Article 7(3) of the DTAA.
- The CIT (A) held that the taxpayer was carrying out a portion of the normal commercial activities of Wellinx Inc. i.e. part of medical transcription work and software development. Accordingly, the same shall not be covered under specific services for the head office as provided under Article 7(3) of the DTAA.
- With regard to the quantum of the income to be taxed in India, the taxpayer contended that though Rule 10(iii) provides for estimation of profit by the AO, it is subject to Article 7(2) of the DTAA. Since the head office has suffered a loss during the year, there cannot be any profit for the branch. However, the CIT (A) held that the income is to be estimated on the basis of the working of the Indian business and it is not relevant whether Wellinx Inc. is in profit or loss. Hence, in the absence of any information, 10% of the net profit would be just and fair in the said case.

Issues before the Hyderabad Tribunal

- Whether the receipts from the HO shall be taxable in India in terms of Article 7(3) of the DTAA?
- If the answer to the above is in affirmative, what shall be the quantum of the profit in terms of Rule 10 of the Income-tax Rules, 1962

Observations and Decision of the Hyderabad Tribunal

- It quite obvious that the taxpayer is only carrying out the normal commercial activities of the Head Office i.e., a part of medical transcription work and software development. The taxpayer has also not brought on record to establish the fact that activities carried on by it is non-commercial and in the nature of specific services as per the instruction of Head Office.
- Though the head office has suffered a loss it cannot be said that there cannot be any profit for the branch office. The profit of the branch has to be computed as per the income earned by it.
- Hence the income relating to commercial activities was chargeable to tax in India.

Conclusion

Hyderabad Tribunal has interpreted Article 7(3) of the India US DTAA in two parts. The first part of the Article relates to the activity carried on by the branch office which is commercial and business in nature whereas the second part relates to activities which are not commercial in nature and relates to specific services performed by the branch office. Only the income arising out of the non-commercial activities specifically assigned by the head office to the branch are not taxable in India.

FEMA

➤ **Review of the policy on FDI in Multi Brand Retail Trading (MBRT) sector**

Press Note No.1 (2013 Series) issued by the DIPP dated June 3rd, 2013

The Government of Himachal Pradesh has given its consent to implement the MBRT policy in Himachal Pradesh in terms of paragraph 6.2.16.5(1)(viii) of Circular 1 of 2013 – Consolidated FDI Policy (FDI Policy). Accordingly, the list of States/ Union Territories which have conveyed their agreement for the policy in MBRT and mentioned in Paragraph

6.2.16.5(2) of the FDI Policy is Amended and updated to include state of Himachal Pradesh. DIPP has also issued clarification on queries of prospective Investors/ Stakeholders on FDI Policy for MBRT

➤ **FDI Policy–definition of 'Group Company'**



Press Note No. 2 (2013 Series) issued by the DIPP dated June 3rd, 2013

The term 'Group Company' has been defined for the purpose of FDI Policy. Accordingly, the Government has decided to incorporate the following definition of 'Group Company' in the FDI policy, effective from April 5, 2013 in paragraph 2.1. 'Group Company' means two or more enterprises which, directly or indirectly, are in a position to:-

- Exercise twenty-six per cent or more of voting rights in other enterprise or appoint more than fifty per cent of members of board of directors in the other enterprise.

➤ **Export of Goods and Services – Realization and Repatriation period for units in SEZ**

Notification No. FEMA.273/2013-RB dated April 25th, 2013 and A.P. (DIR Series) Circular No.108 dated June 11th, 2013

Presently, there is no time limit for realization and repatriation of export proceeds, for the exports made by units in SEZs. Henceforth, units located in SEZs shall have to realize and repatriate full value of

goods/software/services to India within a period of twelve months from the date of export. Any extension of time beyond the above stipulated period may be granted by RBI, on case-to-case basis. This change will be applicable with immediate effect and shall be valid for one year, subject to review.

➤ **Liberalization/ rationalization of External Commercial Borrowing (ECB) policy**

❖ **ECB for the low cost affordable housing projects**

A.P. (DIR Series) Circular No.113 dated June 24th, 2013

ECB for low cost affordable housing projects is allowed as a permissible end use under the approval route. The policy regarding ECB for the low cost affordable housing projects has been reviewed and modified as under:-

- Developers/builders should have a minimum of three years' experience in undertaking residential projects as against five years prescribed earlier and should have good track record in terms of quality and delivery.
- The condition of minimum paid-up capital of not less than 50 crore, as per the latest audited balance sheet, for Housing Finance Companies (HFCs) stands withdrawn. However, the condition of the minimum Net Owned Funds (NOF) of 300 crore for the past three financial years Remains unchanged.
- The aggregate limit for ECB under the low cost affordable housing scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.
- The ECB availed of by developers & builders shall be swapped into Rupees for the entire maturity on fully hedged basis.

Interest rate spread to be charged by National Housing Bank (NHB) may be decided by NHB taking into account cost and other relevant factors.

NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners of individual units under the low cost affordable housing scheme is reasonable. HFCs while making the applications, shall:-

- Submit a certificate from NHB, the nodal agency, that the availment of ECB is for financing prospective owners of individual units for the low cost affordable housing;
- Ensure that cost of such individual units does not exceed 30 lakh and Loan amount does not exceed 25 lakh;
- Ensure that the units financed are having maximum carpet area of 60 square metres; and
- Ensure that the interest rate spread charged by the HFCs to the ultimate buyer is reasonable.

❖ **ECB for 3G spectrum allocation**

A.P. (DIR Series) Circular No.114 dated June 25th, 2013

As per the extant policy, the payment for spectrum allocation shall initially be met out of the Rupee resources by the successful bidders, to be refinanced with a long term ECB, under the approval route, subject to the condition that ECB should be raised within 12 months from the date of Payment of the final installment to the Government. RBI has now decided that ECB window for financing 3G spectrum rupee loans, that are still outstanding in telecom operator's books of account, will be open up to March 31, 2014.

❖ **ECB for Civil Aviation Sector**

A.P. (DIR Series) Circular No.116 dated June 25th, 2013

In terms of A.P. (DIR Series) Circular No. 113 dated April 24th, 2012 the ECB for working capital for the civil aviation sector was to be raised within twelve (12) months from the date of issue of the circular. It has now been decided that the scheme for availing of ECB for working capital for civil aviation sector will continue till December 31th 2013.

❖ **ECB in Renminbi (RMB)**

A.P. (DIR Series) Circular No. 117 dated June 25th, 2013

Since the facility of ECB in Renminbi (RMB) has remained unused so far, the scheme of ECB in Renminbi has been discontinued from the date of issue of this circular.

❖ **Import of Services, Technical know-how and Licence Fees**

A.P. (DIR Series) Circular No.119 dated June 26th, 2013

RBI has decided to include import of services, technical know-how and payment of licence fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECB under the automatic/approval route as the case may be subject to the specified conditions.

❖ **Structured Obligations**

A.P. (DIR Series) Circular No.120 dated June 26th, 2013

It has been decided that credit enhancement can be provided by eligible non-resident entities to the domestic debt raised through issue of INR bonds/debentures by all borrowers eligible to raise ECB under the automatic route. It has also been decided to reduce the minimum average maturity of the underlying debt instruments from 7 years to 3 years. Prepayment and call/put options, however, shall not be permissible for such capital market instruments up to an average maturity period of 3 years.

On invocation of such credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the

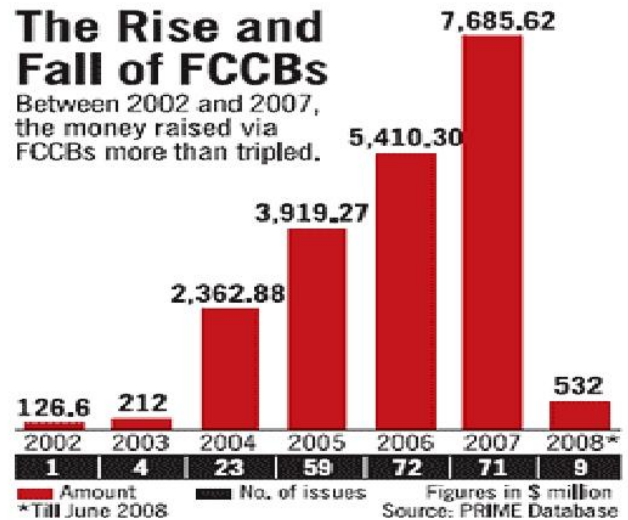
Trade Credit / ECBs as per extant guidelines, would apply to the loan.

❖ **Buyback/prepayment of Foreign Currency Convertible Bonds (FCCBs)**

A.P. (DIR Series) Circular No. 115 dated June 25th, 2013.

The Rise and Fall of FCCBs

Between 2002 and 2007, the money raised via FCCBs more than tripled.



Considering the developments in the global financial markets and on a review of the aforesaid scheme, it has been decided that the existing scheme of Buyback / Prepayment of FCCBs under the approval route which expired on March 31st, 2013 may be continued till December 31st, 2013 and shall stand discontinued thereafter.

CORPORATE LAWS

➤ **SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.**

The SEBI has issued Notification No. LAD-NRO/GN/2013-14/11/6063 on June 12th, 2013 providing for a comprehensive regulatory framework for public issuance of non-convertible redeemable preference shares and also for listing of privately placed redeemable preference shares. Also, as per Basel III norms, banks can issue non-equity instruments such as perpetual noncumulative preference shares and innovative perpetual debt instruments, which are in compliance with the criteria specified by the RBI for

inclusion in additional tier I capital. The regulations shall also be applicable to such instruments issued by banks.

➤ **Clarification on conversion of a Firm into a RBI's Fraud Monitoring Cell to function from Bengaluru**

The RBI has issued Circular No. RBI/2012-13/532/DNBS (PD) CC. No.329 /03.10.42/2012-13 on June 13th, 2013 stating that its Fraud Monitoring Cell attached to the department of banking supervision (DBS), Central Office has shifted from the present location at 2nd Floor, World Trade Centre-1, Cuffe Parade, Mumbai-400 005 to Bengaluru Regional Office of the Reserve Bank. The Central Fraud Monitoring Cell will continue to be part of Department of Banking Supervision, Central Office Mumbai and will start functioning from the SEBI issues broad guidelines on Algorithmic Trading

The SEBI has issued Circular No. CIR / MRD / DP / 16 /2013 on May 21th, 2013 based on various suggestions with regard to the requirement of system audit of trading algorithm/software used by stock brokers/trading members and after due examination of the suggestions in consultation with the Technical Advisory Committee, it has been decided to revise the requirement as follows:-

- Stockbrokers/trading members that provide the facility of algorithmic trading shall subject their algorithmic trading system to a system audit every six months in order to ensure that the requirements prescribed by SEBI / stock exchanges with regard to algorithmic trading are effectively implemented.
- Such system audit of algorithmic trading system shall be under taken by a system auditor who possess any of the following certifications
 - a) CISA(Certified Information System Auditors) from ISACA;
 - b) DISA (Post Qualification Certification in Information Systems Audit) from the Institute of Chartered Accountants of India (ICAI);

c) CISM (Certified Information Securities Manager) from ISACA; (d) CISSP (Certified Information Systems Security Professional) from International Information Systems Security Certification Consortium, commonly known as (ISC) 2. Deficiencies or issues identified during the process of system audit of trading algorithm / software shall be reported by the stockbroker / trading member to the stock exchange immediately on completion of the system audit. Further, the stockbroker/trading member shall take immediate corrective actions to rectify such deficiencies / issues.

➤ **Foreign Direct Investment –Reporting of issue/transfer of Shares to/by A FVCI**

The RBI has issued Circular No. RBI/2012-13/529/A.P. (DIR Series) Circular No.110 on June 12th, 2013 stating that currently transfer of equity shares/fully and mandatorily convertible debentures/fully and mandatorily convertible preference shares (hereinafter referred to as 'shares') of an Indian company, from a person resident outside India (non-resident) to a person resident in India (resident) or vice versa, has to be reported to an authorised dealer bank within 60 days of the transactions.

Further, the receipt of consideration for issue of shares as well as the issue of shares of an Indian company, to a nonresident has to be reported to the RBI through an authorised dealer bank within 30 days of the transaction. While observing that SEBI registered FVCIs making investments in an Indian Company under FDI Scheme also report the same transaction resulting in double reporting of the transaction this clarificatory circular is issued. It is now clarified that wherever a SEBI registered FVCI acquires shares of an Indian company under FDI Scheme, such investments have to be reported in Form FC-GPR/FC-TRS only, as applicable. Where the investment is under Schedule 6of the Notification, no FC-GPR/FC-TRS reporting is required. Such transactions would be reported by the custodian bank in the monthly reporting format as

prescribed by RBI from time to time. Revised forms FC-GPR and FC TRS are annexed to this circular. A SEBI registered FVCI while making investment in an Indian company may need to determine upfront whether the said investment is under FDI or FVCI scheme and report accordingly. For the guidance of FVCI investors, a suitable remark in para. 3(4) and 5(a) (4) of Form FC-GPR and para. 4(4) and para. 5(4) of Form FC-TRS, has been incorporated, which would read as follows: 'The investments made by SEBI registered FVCI is/are under FDI Scheme, in terms of Schedule 1 to Notification No. FEMA 20 dated May 3rd, 2000.

➤ **NBFCs not to be Partners in Partnership Firms–Clarifications**

The RBI has issued Circular No. RBI/2012-13/526/DNBS.PD/CC.No. 328/03.02.002/2012-13 on June 11th, 2013 stating that currently NBFCs are prohibited from contributing capital to any partnership firm or to be partners in partnership firms. In cases of existing partnerships, NBFCs were advised to seek early retirement from the partnership firms. It is now clarified that (a) partnership firms mentioned above will also include Limited Liability Partnerships (LLPs), and (b) further, the aforesaid prohibition will also be applicable with respect to Association of Persons, these being similar in nature to partnership firms. NBFCs which had already contributed to the capital of an LLP/Association of

Person or were a partner of LLP/Association of Persons are advised to seek early retirement from the LLP/Association of Persons. One may refer to the above citation for further details.

➤ **Amendment to SEBI Buyback Regulations governing buyback through Open market purchase**

The SEBI has issued Press Release No. PR No. 60/2013 dated June 25th, 2013 approving changes to buyback of shares or other specified securities from the open market through stock exchange mechanism and which are detailed below:-

- The mandatory minimum buyback has been increased to 50% of the amount earmarked for

the buyback, as against existing 25%, failing which amount in the escrow account would be forfeited subject to a Maximum of 2.5% of the total amount earned.

- The maximum buyback period has been reduced to 6 months from 12 months.
- Companies shall create an escrow account towards security for performance with an amount equivalent to at least 25% of the amount earmarked for buyback.
- The company shall not raise further capital for a period of one year from the closure of the buyback except in discharge of subsisting obligations as against the existing 6 months.
- The company shall not make another buyback offer within a period of One year from the date of closure of the preceding offer.
- The disclosure requirements have been rationalized requiring disclosure of the shares bought back on a cumulative basis on the website of the company and the stock exchange, only on a daily basis instead of the current requirement of disclosure on daily, fortnightly and monthly basis.
- The companies can buy back 15% or more of capital (paid-up capital and free reserves) only by way of tender offer.
- Procedure for buyback of physical shares (odd-lot) has been modified which includes creation of separate window in the trading system for tendering the shares, requirement of PAN / Aadhaar for verification, etc.
- Companies are permitted to extinguish shares bought back during the month, within fifteen days of the succeeding month subject to the last extinguishment within seven days of the completion of the offer.
- The promoters of the company shall not execute any transaction, either on-market or off-market, during the buyback period.

POLICY WATCH

➤ **Government to roll out INR 1000 billion infra projects**

Government has planned to roll out projects worth INR 1000 billion in Public- Private-partnership (PPP) mode by the end of this calendar year. This will include setting up 60 airports and upgrading two others. The other major projects include monitoring the construction of Mumbai's INR 300 billion elevated rail corridor and power and transmission projects worth INR 400 billion.

➤ **Government set to privatize 15 more airports**

Government has decided to privatize 15 airports. The process will start with six main airports - Kolkata, Chennai, Ahmedabad, Jaipur, Lucknow and Guwahati. These airports will be operated, managed, and further developed by the PPP players, in which Airports Authority of India (AAI) will also have a stake. All employees working at these airports will have to be retained by the new operators.

➤ **RBI relaxes bonds issue norms for NBFCs**

The Reserve Bank of India (RBI) has relaxed the norm that requires Non-Banking Finance Companies (NBFCs) to have a minimum gap of six months between two Non- Convertible Debentures (NCDs) issues. Also, to facilitate the process of moving into a more robust asset - liability management (environment) in a non-disruptive manner, it has been decided that the instruction with regard to minimum gap between two successive issuances of privately placed NCDs may not be operationalize immediately.

➤ **SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013**

Background

Securities Exchange Board of India (SEBI), with a view to foster the fund raising options for Corporate and Banks and at the same time ensuring transparency and to protect the interest of investors

has notified a new set of Regulations governing issuance and listing of Non-Convertible Redeemable Preference Shares (NCRPS) viz. SEBI (Issue & Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (Regulations). The Regulations have come into force with effect from June 12, 2013. Key features of the Regulations are summarized below:

Applicability

The Regulations shall be applicable to the following:

- Public issue of NCRPS;
- Listing of NCRPS on recognized stock exchange issued by a public company through public issue or on private placement basis; and

Issue and listing of Perpetual Non-Cumulative Preference Shares and Perpetual Debt Instrument issued by banks on private placement basis in compliance with Guidelines issued by Reserve Bank of India (RBI).

➤ **Liberalization in Foreign Direct Investment Policy**

Background

On the basis of recommendations received from an Expert Committee, the Government of India (GoI) has on July 16, 2013 approved the changes in Foreign Direct Investment (FDI) Policy. Ministry of Commerce & Industry has issued a press release highlighting the changes. The formal press note giving details of the change is awaited.



Key changes in FDI Policy are summarized below:

S.No	Sector	Revised Cap
1.	Petroleum and Natural Gas (Petroleum refining by PSU's).	FDI up to 49% under automatic route.
2.	Commodity Exchange.	FDI up to 49% under automatic route.
3.	Power Exchanges.	FDI up to 49% under automatic route.
4.	Stock Exchanges, Depositories, Corporation.	FDI up to 49% under automatic route.
5.	Asset Reconstruction Companies.	Up to 49% - automatic route. More than 49% and up to 100% - approval route.
6.	Credit Information companies.	Up to 74% under automatic route.
7.	Single Brand Retail Trading (SBRT).	Up to 49% - automatic route. More than 49% and up to 100% - approval route.
8.	Basic and Cellular Services, etc.	Up to 49% - automatic route. More than 49% and up to 100% - approval route.
9.	Courier Services.	FDI up to 100% under automatic route.
10.	Defence Production.	Up to 26% under approval route. Beyond 26% Cabinet Committee on Security (CCS) may approve proposal which are likely to

		result in access to modern and state of the art technology in the country.
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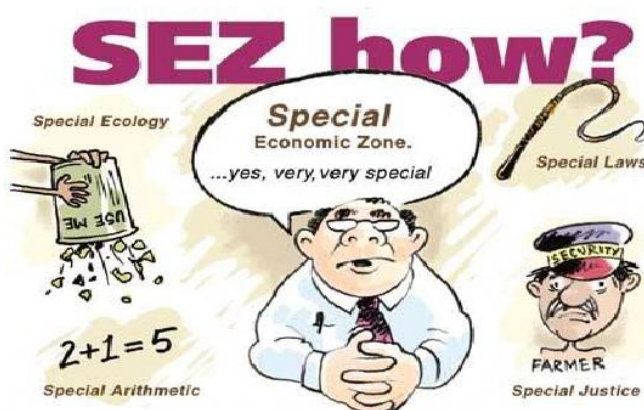
Conclusion

The revised sectoral caps will come into effect once the Press Notes are issued by Department of Industrial Policy & Promotion (DIPP).

➤ **Tax relief accorded for contract R&D centres**

Government has given tax relief to the development centres engaged in contract Research and Development (R&D) services. As captive centers of multinational companies perform minimal functions for the parent and share a low risk, these would be subjected to a less stringent way of computing taxable income. The Central Board of Direct Taxes (CBDT) will now classify R&D centres set up by foreign companies in three broad categories based on functions, assets and risk assumed by the centre established in India.

➤ **Service tax refund norms simplified for SEZs**



The Special Economic Zone (SEZ) developers and units will not be required to pay tax on certain services for which they had to seek refund. The SEZs have been exempted from service tax. However, the developers and unit owners have to first pay the tax and then claim refund. The norms have been issued at a time when SEZs are losing shine after the Government decided to impose Minimum Alternative Tax and dividend distribution tax on such zones.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ **FIPB clears Telenor's INR 10 billion investment plan for Indian JV**

Telenor Mobile Communication AS' application to set up a JV company in telecom sector involving INR 10 billion FDI inflows has been cleared by the Foreign Investment Promotion Board (FIPB). Telenor had applied for raising its stake in its Indian subsidiary Telewings Communications through which it participated in spectrum auction conducted in November 2012 for fresh purchase of airwaves. As per the procedure, Telenor Group applied for FIPB approval for investing further in India and increases the ownership from 49% to 74% in Tele wings.

➤ **India-Sri Lanka bilateral trade to be doubled in 3 years**

Bilateral trade between India and Sri Lanka which has now reached USD 5 billion would be doubled to USD 10 billion in the next 3 years. India has emerged as Sri Lanka's foremost development partner in public investment strategy through the provision of assistance and credit totaling USD 1.75 billion. Indian projects include construction of 50,000 houses and assistance in public transport network infrastructure rebuilding.

➤ **India invites Vietnam to set up electronics cluster city**

India has invited Vietnam to set up an electronics cluster in India. The two countries have signed two Memorandums of Understanding (MOU) for partnership in the field of information, communications, and technology (ICT). The first MOU was on telecom regulation between the Telecom Regulatory Authority of India and the Vietnam Telecommunications Authority. The second was on spectrum management between Wireless Planning & Coordination Wing, DOT and the Authority of Radio Frequency Management, Vietnam. Electronics manufacturing, software services, standards setting, cyber security, spectrum

management, ICTs regulation, cooperation on multilateral platforms and disaster management in coastal areas are some of the areas in which the countries could cooperate with each other.

➤ **Leather exports may touch USD 14 billion marks by 2017**

India's leather exports are expected to touch the USD 14 billion level by 2017 and may double jobs in the sector to 5 million. At present, the sector employs 2.5 million people mainly in leather hubs, including Agra, Kanpur, Kolkata, Chennai, Mumbai, Bangalore, and Pondicherry. The US and Europe have together account for over 65% of the country's total leather exports.

➤ **Union cabinet approves Mumbai metro line-3 corridor**

The union cabinet has approved the Mumbai Metro Line-3 Colaba-Bandra-Santacruz Electronics Export Processing Zone (Colaba-Bandra-SEEPZ) corridor. It has further approved the conversion of the existing State level Special Purpose Vehicle (SPV) Mumbai Metro Rail Corporation into a Joint Venture Company of the Government of India and Government of Maharashtra, with equity

Participation on 50:50 bases. The total completion cost of the project is estimated at INR 231.36 billion covering a total length of 33.5 km and the project is scheduled to be completed in six years that is by March, 2019.

➤ **Auto component maker Rane Group to merge two group entities**

Auto component maker Rane Die cast Ltd (RDL) will be merged with another group firm Rane (Madras) (RML) with retrospective effect from April 1, 2013. RDL is based in Hyderabad and manufactures precision high pressure aluminium die castings mainly for export. The merger with RML will help RDL's business grow at a faster rate leveraging the customer base of RML besides benefiting from other synergies in combining the operations of the two companies. The Rane Group

comprises seven companies manufacturing safety and critical components for a broad range of automotive industry segments. In fiscal 2012-13 it posted revenues of INR 29.23 billion.

➤ **Elder Pharma acquires UK based Max Healthcare**



Pharmaceuticals Ltd.

Elder Pharmaceuticals has acquired UK-based Max Healthcare for an undisclosed sum. The acquisition is through Elder's fully-owned UK subsidiary, Nutra Health, and will mark its reentry into the Over-The-Counter (OTC) pharmaceutical category. Nutra Health provides innovative branded and own-label vitamin and food supplements in the UK. Max Healthcare is an OTC business that also owns a range of marketing authorizations and provides own label and branded OTC medicines and products to different customers. It predominantly is an outsourced operation with most of its manufacturing taking place in India.

➤ **WNS extends contract with Scandinavian Airlines**



Extending Your Enterprise

WNS has announced its service contract with Scandinavian Airlines. Under this agreement, WNS will continue to provide a comprehensive range of services in Passenger Revenue Accounting (PRA), and in addition, will begin providing analytical support, risk, audit and compliance services. The

company recently had also announced the extension of its contract with British Airways.

➤ **Hero Moto Corp picks up 49.2% stake in US Company**






Inc for the purposes of investing in Erik Buell Racing, Inc, Hero Moto Corp (HMC). This development is a part of the Indian firm's strategy to have multiple technology sources for different segments and enhance its own R&D capability.

➤ **Isuzu to assemble SUV & truck at HM plant.**

Isuzu Motors India entered into an agreement with Hindustan Motors (HM) for contract manufacturing of Isuzu Sports Utility Vehicles (SUVs) and pickup trucks. The components for producing these vehicles will be imported by Isuzu Motors from Thailand and assembled in HM factory at Thiruvallur, near Chennai. The move is expected to help the Japanese major increase sales of its recently launched MU-7 SUV and DMAX pickup truck even before its proposed plant in Andhra Pradesh becomes operational.

➤ **Apparel exports register 19% growth in July 2013**

INDIA'S garment exports grew by 19% year-on-year to USD 1.27 billion in July 2013 on the back of increasing demand in developed economies such as the US. The exports in dollar terms between April and July 2013 were up 13% over the same period of the previous financial year to reach USD 4,841 million. However in rupee terms they were higher at 18% at INR 275.38 billion compared to INR 233 billion between April and July 2012.

Statutory compliance calendar for the month of July 2013			
Due date	Statutory compliance under Act	Particulars	Governing Authority
			
06/07/2013	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
07/07/2013	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.
	SEBI	Quarterly certificate on demat/remit shares to depositories	The securities and exchange board of India Act-1992
10/07/2013	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.
15/07/2013	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.
21/07/2013	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.
25/07/2013	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
30/07/2013	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.
31/07/2013	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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