

Tax & Corporate law Bulletin

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SEPTEMBER 2013

From the Editor's Desk...

Dear Reader,

Greetings for the season.

May your new month, as bright as sun, as colorful as rainbow, as lovely as flowers, as happy as birds, we wish this month brings more inspiration and love in your life.

Here are some important of this month: Income tax (12th amendment) rules, 2013, Opportunity of Being Heard For Rejection of Declaration, Companies (Removal of Difficulties) Order, 2013 and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & Associates
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Your partners
for success

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Table of contents

DIRECT TAX 3-5

RECENT JUDGEMENT



INDIRECT TAX 5-7

❖ SERVICE TAX

❖ CENTRAL EXCISE



CORPORATE LAWS 8-11

FEMA 11-12



POLICY WATCH 12-14



INDUSTRY WATCH & CORPORATE HIGHLIGHT 14-15

GLOSSARY 18

“Adapting swiftly to the
global business environment”



DIRECT TAX

- **Income tax (10th amendment) rules, 2013 – insertion of rules 6AAF, 6AAG, 6AAH and form nos. 3CQ & 3CR**

The detailed rules with respect to Guidelines for approval of skill development project under section 35CCD (Rule 6AAF), conditions subject to which a skill development project is to be notified under Section 35CCD (Rule 6AAG) and meaning of expressions used in Rule 6AAF and 6AAG (Rule 6AAH) have been issued. Further, Form No 3CQ being the Application Form for approval under section 35CCD (1) and Form No 3CR being the Form for notification of skill development project under section 35CCD (1) has also been prescribed.

- **Section 119 Of The Income-Tax Act, 1961 – Extension Of Due Date For Filing Returns Of Income From September 30, 2013 To October 14th, 2013 In Case Of Assessee In The State Of Gujarat Due To Reports Of Dislocation Of General Life Caused By Heavy Rains And Floods**

Order [F. No. 225 / 117 / 2013 / ITA. II], Dated September 30th, 2013

On consideration of reports of dislocation of general life caused due to recent heavy rains and floods in the State of Gujarat, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-Tax Act, 1961, hereby extends the 'due-date' for filing Returns of Income from September 30, 2013 to October 14, 2013, in cases of Income-tax assessee in the State of Gujarat, who are liable to file their Income tax returns by September 30th, 2013.

- **Section 10A read with sections 10AA & 10B of the Income Tax Act, 1961 – free trade zone – clarification on issues relating to applicability of chapter IV of the act and set off and carry forward of business losses**

It has been brought to the notice of the Board that the provisions of 10A/10AA/10B/10BA of the Income-Tax Act, with regard to applicability of Chapter IV of the Act and set off and carry forward of losses, are being interpreted differently by the Officers of the Department as well as by different High Courts. The two sections 10A and 10B of the Act were initially placed on statute in 1981 and 1988 respectively, and continued with some modifications and amendments till March 31st, 2001.

The effect of the substitution of sections 10A and 10B of the Act has been elaborated in Circular No. 794 dated August 9th, 2000 which clearly provides that the new provisions provide for deduction in respect of profits and gains derived by an undertaking from export of articles or things or computer software. Sub-section (6) of sections 10A and 10B were amended by Finance Act, 2003 with retrospective effect from April 1st, 2001. Circular No. 7/2003, dated October 5th, 2003 explains the amendments brought by Finance Act, 2003.

It is evident that irrespective of their continued placement in Chapter III, sections 10A and 10B as substituted by Finance Act, 2000 provide for deduction of the profits and gains derived from the export of articles or things or computer software for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such article or thing or computer software. The deduction is to be allowed from the total income of the assessee. The term 'total income' has been defined in section 2 (45) of the I.T. Act and it means the total amount of income referred to in section 5, computed in the manner laid down in the Income-Tax Act.

- **Extension of due date for filing returns of income required to be furnished by 31st July 2013 to 31st October, 2013 in respect of assessee residing or assessed in state of uttarakhand**

Considering the large-scale devastation due to recent natural calamity in the State of Uttarakhand, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-Tax Act, 1961, hereby extends the 'due-date' for filing Returns of income required to be furnished by 31st July, 2013 to 31st October, 2013, in respect of income-tax assessee's residing or assessed in the State of Uttarakhand.

➤ **Income tax (12th amendment) rules, 2013- substitution of rule 37BB and form no. 15CA & 15CB**

In exercise of the powers conferred by sub-section (6) of section 195 read with section 295 of the Income-Tax Act, 1961, the Central Board of Direct Taxes has substituted Rule 37BB with respect to the Furnishing of Information by the person responsible for making payment to a non resident, not being a company, or to a foreign company. Further, Form 15CA w.r.t. Information to be furnished for payments to a non-resident not being a company or to a foreign company and Form 15CB w.r.t. Certificate of an Accountant has also been substituted.

➤ **Section 90 of the Income-Tax Act, 1961 – double Taxation agreement – agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – Australia – amendment in notification no. GSR 60(e), dated January 22, 1992**

Notification 74/2013 [F. No. 503/1/2009-Ftd-II/So 2820e], Dated September 20, 2013 Whereas the Protocol amending the Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as "Protocol") signed on the 16th day of December, 2011 shall enter into force on the 2nd day of April, 2013. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-Tax Act, 1961 (43 of 1961), the Central Government

hereby directs that all the provisions of the Protocol annexed hereto shall be given effect to and shall be deemed to have been given effect to in the Union of India in accordance with Article 7 of the said Protocol, namely:-

- In respect of Articles 1, 2 and 3 of the said Protocol, for the Financial Year 2014-15 and subsequent financial years;
- In respect of Articles 4 and 5 of the said Protocol, from the 2nd day of April, 2013; and
- In respect of Article 6 of the said Protocol, from the 18th day of July, 2013.

RECENT JUDGEMENT

➤ **Section 245 of the Income-Tax Act, 1961 – refunds – set off of refunds against tax remaining payable – past adjustment of refunds against arrears where procedure under section 245 was not followed**

Hon'ble Delhi High Court vide its judgment in case of Court on its Own Motion v. UOI and Others in W.P.(C) 2659/2012, dated March 14th, 2013 has issued seven "Mandam uses" for necessary action by the Income Tax Department. One Mandamus is on past adjustments of refunds against the arrears; in particular, where procedure prescribed under Section 245 of the Income-Tax Act, 1961 has not been followed. In view of the direction of the Hon'ble Court, it has been conveyed that the exercise desired by the Hon'ble High Court in respect of cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act, be carried out by 31st August, 2013 positively.

Fact of the case

- In the affidavit filed on January 29, 2013, the respondents have stated as under:-

'Where an assessee makes a mistake in the claim of TDS in the e-return and the return is processed and a demand is raised and subsequently, the assessee rectifies the mistake in the claim and files an online rectification application, the same is processed and on any excess TDS is refunded, the interest under section 244A is granted as per the I.T. Act after excluding the period of delay attributable to the assessee in terms of sub-section (2) of section 244A of the Income-Tax Act, 1961.

- An assessee can be certainly denied interest if delay is attributable to him in terms of sub-section (2) to section 244A. However, when the delay is not attributable to the assessee but due to the fault of the Revenue, then interest should be paid under the said section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment is made under section 245 of the Act cannot be attributed and treated as fault of the assessee. These are lapses on the part of the Assessing Officer i.e. the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing Officer may deny interest for reasons to be recorded in writing if the assessee was in fault and responsible for the delay. This is the fourth mandamus which we have issued."

Held

In view of the direction of the Hon'ble Court, it is conveyed that in no case should interest u/s 244A of the Act be denied to the assessee where the assessee is not at fault. The observation of the Hon'ble High Court in Para 32 above be strictly kept in mind while dealing with such matters.

INDIRECT TAX

- **Rejection of Declaration Based On Roving Information**

It is clarified that any roving information sought by the department from the potential taxpayer regarding the business activities without seeking any documents (such as accounts, financial statements etc.) or calling for his presence even by quoting Section 14 of the CE Act, would not attract the provisions of section 106(2)(a) related to rejection of declaration.

- **Filing of Declaration By A Branch**

An assessee can avail the benefit under VCES in respect of its branch/unit upon which no show cause notice has been issued, even when such a notice has been issued upon some other branch/unit of the assessee, provided that each of the branches/units are separately registered under service tax.

- **Wrong Utilization of Cenvat Credit**

A person can make a declaration under VCES if he has wrongly utilized CENVAT credit for making payment of service tax. Wrong utilization of CENVAT credit amounts to non-payment of service tax and such amount is covered under the definition of "tax dues".

- **Inquiry, Investigation Or Audit Initiated After. March 1st, 2013**

There is no bar on the person from declaring his tax dues under VCES, if an inquiry, investigation or audit is initiated after March 1st, 2013 (the cut-off date).

- **SCN Issued For The Period Prior To October, 2007**

Issuance of a show cause notice or order of determination on any issue for the period prior to October, 2007 on a person, does not make him ineligible to declare his tax dues for the period covered under VCES on the similar issue. The 2nd proviso to section 106(1) shall not be attracted in such cases.

➤ **Audit Concluded Before March 1st, 2013**

Where an audit has been conducted and the “Audit Para” is issued to the assessee, he can declare his tax dues under VCES on such issues which have not been covered by the said “Audit Para”.

➤ **Immunity from Penalty for Non Filing of Return**

An assessee who has paid his service tax liability but has not filed return cannot make a declaration under VCES to avoid the payment of penalty for non-filing of return. Such a case does not come within the ambit of the scheme. However, penalty for non-filing of return can be waived in deserving cases and the assessee can seek relief under Rule 7C of STR, 1994 by making payment of late filing fees as prescribed.

➤ **Tax Paid Before Enactment Of VCES**

Any amount of tax dues paid before the scheme was notified or before its enactment i.e. 10th May, 2013, shall be adjudicated as per the provisions of Chapter V of the Finance Act, 1994 and no immunity under the scheme shall be granted on such amount paid prior to enactment of VCES.



➤ **Change in Provisions of Law**

An assessee under dispute with the department on an issue in the erstwhile provision of the law for the part of the period covered under VCES cannot avail the benefit of the scheme for the remaining period or the subsequent period under the amended provisions of the law on the similar issue. The 2nd proviso to section 106(1) shall be attracted in such cases.

➤ **Rectification/Revision of Declaration**

The declarant is expected to file his declaration

Under VCES correctly. However, if by mistake there is an error in his declaration, which is suo motu discovered by him, he can approach the designated authority and admit the incorrectness in his declaration. The designated authority after taking into account all the facts of the case may consider the amended declaration. However, the said amendment shall be furnished before the last date of filing declaration i.e. December 31st, 2013.

➤ **Payment Of Tax Before Receipt Of Acknowledgement**

If the acknowledgement in VCES-2 has not been issued by the designated authority within seven working days from the date of filing declaration, the declarant can start making payment under VCES. It is further clarified that the declarant can pay the tax dues even before the issue of acknowledgement. The payment of tax dues and the issue of acknowledgement are not linked to each other.

➤ **Opportunity of Being Heard For Rejection of Declaration**

The declarant shall be given an opportunity of being heard when the designated authority intends to reject his declaration u/s 106(2). The order for rejection shall be passed only upon recording the reasons for the same and following the principles of natural justice.

It is clarified that the designated authority, if he has the reasons to believe that the declaration is covered by section 106(2), shall issue a notice within 30 days of filing of declaration. For the declarations filed before this circular being issued, the 30 days shall be counted from the date of this circular i.e. August 8, 2013.

➤ **Appeal against Rejection of Declaration**

The VCES does not provide for a statutory provision to file an appeal against the order for

rejection of declaration passed by the designated authority u/s 106(2) of the Finance Act, 2013.

➤ **Adjustment Of Tax Already Paid On Rejection Of Declaration**

If the declaration gets rejected u/s 106(2), the declarant shall be allowed to adjust the amount already paid under VCES against the liability determined by the department on such rejection.

➤ **Declaration Being Substantially False**

The proceedings u/s 111 of the Finance Act, 2013 shall be initiated in accordance with the principles of natural justice. The Commissioner after considering the overall facts of the case takes a judicious view as to whether the declaration is “substantially false”. For illustration : A declarant making a declaration of Rs. 25 Lakh as his tax dues, but if the commissioner has specific information that the actual tax dues are Rs. 50 lakh, then such declaration would fall within the meaning of “substantially false declaration”.

➤ **Disqualification on Non Payment of 50% of Tax Dues**

The declarant would not be eligible to the benefit of the VCES scheme if he does not satisfy the condition laid in section 107(3) i.e. payment of at least 50% of the tax dues on or before 31st December, 2013.

➤ **Availment of Cenvat Credit**

The VCES does not restrict the availment of CENVAT credit on the inputs/input services used for providing output services and utilizing the same for payment of any tax liability outside VCES. The VCES rules only prescribe that the payment under VCES shall be made in cash and not by utilizing CENVAT credit. The admissibility of the CENVAT credit shall continue to be governed by the provisions of the CENVAT Credit Rules, 2004.

The VCES does not restrict availment of CENVAT credit of the amount paid under VCES, to the

service recipient under a supplementary invoice. Also, the CENVAT credit shall be eligible to the service recipient who pays his tax dues under VCES under reverse charge mechanism.

It has been clarified that admissibility of such CENVAT shall be governed by the provisions of Rule 9(1)(bb) and Rule 9(1)(e) of the CCR, 2004 i.e. eligibility of CENVAT credit based on supplementary invoice except where the additional amount of tax is recoverable from the provider by reason of fraud, collusion etc., or a challan evidencing payment of service tax by the service recipient, respectively.

➤ **How to Determine Conclusion of Audit**

The point of initiation of audit and its culmination have been clarified so as to give the meaning to the words pendency of the audit for invoking section 106(2). For the purpose of VCES, the initiation of audit shall be the date of visit of the auditors to the unit of the tax payer.

The culmination of audit shall be determined in any of the following manner:-

- Closure of audit file if no discrepancy is found in audit;
- Closure of audit para by the Monitoring Committee Meeting (MCM);
- Approval of audit para by MCM and payment of amount involved therein by the party in terms of the provisions of the Finance Act, 1994;
- Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.

The pendency of audit as on March 1st, 2013 means that an audit has been initiated before March 1st, 2013 but has not been culminated as on March 1st, 2013.

CORPORATE LAW



➤ **Investment by Qualified Foreign Investors (QFIs) instead “to be listed” Indian Corporate Debt Securities**

The SEBI has issued Circular No. CIR/ IMD/ FIIC/13/2013 dated August 13th, 2013 currently QFIs were allowed to invest in listed/to be listed Indian corporate debt securities through public issues and units of debt schemes of Indian mutual funds. Now, with a view to align the eligibility criteria for investment in debt securities between SEBI and RBI, and to bring QFI and FII at par for investment in “to be listed” debt securities, QFIs to be allowed to invest in “to be listed” corporate debt securities directly from the issuer. In the circumstance that the debt issue cannot be listed within 15 days of issue for any reason whatsoever, the holding of the QFI shall be sold off only to domestic participants/investors until the securities are listed.

➤ **Decisions taken at SEBI board meeting held on August 12th, 2013**

The SEBI has issued Press Release No. PR No. 73/2013 dated August 12th, 2013 in relation to decisions taken to make the following amendments:-

- Amendment to SEBI (Prohibition of Fraudulent and Unfair Trade Practices (“FUTP) relating to Securities Market) Regulations, 2003 - Illegal mobilization of money by unregistered Collective Investment Schemes. SEBI has approved to declare illegal mobilization of funds without obtaining a certificate under the SEBI (Collective

Investment Schemes) Regulations, 1999 as a FUTP and amend the SEBI (Prohibition of FUTP relating to Securities Market) Regulations, 2003, accordingly. This amendment has been made to impose deterrent adjudication penalties on unregistered CIS entities mobilizing money.

- Clarificatory amendment to the SEBI (Prohibition of FUTP relating to Securities Markets) Regulations, 2003. SEBI has approved to bring a clarificatory amendment to the SEBI (Prohibition of FUTP relating to Securities Market) Regulations, 2003 in order to clarify that the list under regulation 4(2) is not exhaustive and the general provisions of regulation 3 will override.
- Securities Laws (Amendment) Ordinance, 2013. SEBI took note of the provisions of the Securities Laws (Amendment) Ordinance, 2013 promulgated by President of India on July 18, 2013 and discussed the follow-up actions on the part of SEBI.
- Independent consultant. SEBI had engaged an independent consultant to revisit the structural and organizational issues, re-prioritize areas of focus and to look at the technological and manpower needs of SEBI. The consultant submitted its recommendations, which included greater focus on mobilizing household savings into capital market assets, enhanced focus on supervisory functions, oversight of listed companies, re-organization of functional departments, and increase in manpower, IT strategy for organizational efficiency and improving training and performance management system. SEBI has accepted the recommendations and agreed on the implementation plan for the same.

➤ **Amendment to SEBI buyback regulations**

The SEBI has issued Notification No. LAD-NRO/GN/2013-14/16/6348 on August 8th, 2013

amending the SEBI (Buy-back of Securities) Regulations, 1998 as per following:-

- A company may not buy-back its shares or other specified securities exceeding fifteen per cent or more of the paid-up capital and free reserves of the company from the open market,
 - A company shall not make any offer of buy-back within a period of one year reckoned from the date of closure of the preceding offer of buy-back.
 - The company shall ensure that at least 50% of the amount earmarked for buy-back is utilized for buying-back shares or other specified securities.
 - The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer.
 - Detailed amendment made in relation to buy-back of physical shares or other specified securities.
 - Amendment made in relation to keeping 25% of the proposed buyback offer amount in an escrow account and in case companies falter on some account, there will be a penalty and that could be of a maximum 2.5% on the funds lying in the escrow account. Detailed regulations relating to manner and mode of utilization of escrow account made.
 - The company shall not raise further capital for a period of one year from the closure of buy-back offer, except in discharge of its subsisting obligations.
- **SEBI Circular for Application for change in category of Alternative Investment Fund (AIF)**

The SEBI has issued Circular No. CIR/ IMD/ DF/ 12/2013 on August 7th, 2013 stating that currently an AIF which has been granted registration under a particular category cannot change its category

subsequent to registration except with the approval of SEBI. It is now provided that only AIFs which have not made any investment under the category in which they were registered earlier shall be allowed to make application for change in category. Any AIF proposing to change its category shall make an application to SEBI with application fees of 1 lakh.

The application shall include rationale for the proposed change and no registration fees shall apply for such applications. If the AIF has received commitments/raised funds prior to application for change in category, it shall be required to send letters/emails to all its investors providing them the option to withdraw their commitments/funds raised without any penalties/charges. Any fees collected from investors seeking to withdraw commitments/funds shall be returned to them. Partial withdrawal may be allowed subject to compliance with the minimum investment amount required under the AIF Regulations.

The AIF shall not make any investment other than in liquid funds/bank deposits until approval for change in category is granted by SEBI and on approval of the request from SEBI, the AIF shall send a copy of the revised placement memorandum and other relevant information to all its investors. SEBI has also issued circular No. CIR/ IMD/ DF/ 10/ 2013 dated July 29th, 2013 operational, prudential and reporting norms for AIFs.

➤ **SEBI Mutual Fund Amendment Regulations**

The SEBI has issued Notification No. LAD-NRO/ GN/ 2013-14/ 18/ 6384 on August 19th, 2013 amending the SEBI (Mutual Funds) Regulations, 1996 whereby it is now provided that an asset management company may become a proprietary trading member for carrying out trades in the debt segment of a recognised stock exchange, on behalf of a mutual fund. Also, in a case where a sponsor or its associates hold 50 per cent or more of the voting rights of the share capital of the custodian, such custodian may act as custodian for a mutual

fund constituted by the same sponsor or any of its associates or subsidiary company if :-

- The sponsor has a net worth of at least twenty thousand crore rupees at all points of time;
- 50 per cent or more of the directors of the custodian are those who do not represent the interest of the sponsor or its associates;
- The custodian and the asset management company of a mutual fund are not subsidiaries of each other;
- No person is a director of both the custodian and the asset management company of a mutual fund; and
- The custodian and the asset management company of a mutual fund sign an undertaking that they will act independently of each other in their dealings with the scheme.

➤ **Clarification on SEBI (Investment Advisers) Regulations, 2013**

The SEBI has issued Press Release 77/2013 on August 29th, 2013 stating that in terms of the SEBI (Investment Advisers) Regulations, 2013, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the SEBI or he is specifically exempt. It is also provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate within the said period of six months, till the disposal of such application.

SEBI has advised that all persons acting as an investment adviser before the commencement of these Regulations are advised to make their application for grant of registration before October 21st, 2013 to continue to do so and shall comply with the requirement of obtaining a certificate of registration for acting as investment adviser under

the IA regulations. Such persons seeking registration under these Regulations may file their registration application with the concerned Regional Office/Local Office of the SEBI for grant of registration.

➤ **Discussion Paper on Revision of Clause 41 of Equity Listing Agreement**

The SEBI has issued Press Release No. 75/2013 dated August 20th, 2013 in relation to revision of clause 41 of the equity listing agreement which provides the framework for preparation, authentication and submission of financial results by listed companies. Based on the requests/suggestions/ recommendations received from various market participants, some of the provisions of clause 41 have been revised.

It is proposed to replace the existing clause 41 of the equity listing agreement for which comments from all stakeholders are sought by September 13th, 2013. Broadly, the revision entails inter alia Format for Finance Companies, Disclosure of half yearly (every six months) consolidated financial statements, Mandatory disclosure of Book Value of equity shares half yearly, Mandatory submission of statement of cash flow half yearly, Mandatory disclosure of details of the discontinued operations as part of the notes to the financial results, etc.

➤ **Companies (Removal of Difficulties) Order, 2013**

The MCA has issued the “Companies (Removal of Difficulties) Order, 2013” on September 20, 2013 to remove the difficulties arising from the operation of provisions contained in section 24, section 58 and section 59 of the Companies Act, 2013 which came into force on the 12th day of September, 2013. Section 24 provides for exercise of certain powers regarding prospectus, return of allotment, redemption of preference shares and other matters specifically provided in the said Act by the Central Government, Tribunal or the Registrar. Section 58 and section 59 of the said Act provide for certain powers of the Tribunal which

deal with hearing of an appeal against the refusal of registration or rectification of name of members in the register of members of a company respectively.

The provisions of section 55A, section 111 and section 111A of the Companies Act, 1956 (1 of 1956) which correspond to section 24, section 58 and section 59 of the said Act confer above said powers on the Company Law Board constituted under the Companies Act, 1956 difficulties have arisen regarding compliance with the provisions of section 24, section 58 and section 59 of the said Act in so far as they relate to exercise of certain powers by the Tribunal during the period it is duly constituted under the said Act. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the companies Act, 2013 (18 of 2013), the Central Government has issued the Companies (Removal of Difficulties) Order, 2013.

FEMA

➤ FDI in Multi-Branded Retail Trading (MBRT)

The Policy - Multi Brand Retail Trading

EARLIER	NOW
<p>FDI in Multi Brand Retail Trading was not allowed</p> 	<p>FDI in Multi Brand Retail Trade is permitted up to 51% subject to following conditions:</p> <ul style="list-style-type: none"> Outlets to be set up - only in cities with a population of more than 1m (within a 10km range)* Minimum investment by the foreign investor - US \$100mm and at least 30% of the procurement of manufactured / processed products shall be sourced from 'small industries' (investment in Plant and Machinery not exceeding US \$1million) Sourcing requirements will be checked together for first five years - after that on an annual basis Retail trading by means of e-commerce - not permissible At least 50% of total FDI brought in shall be invested in "back-end infrastructure" within three years of the induction of FDI

* States in Group of ECs in MBRT: Andhra Pradesh, Assam, Bihar, Haryana, J&K, Madhya Pradesh, Manipur, Rajasthan, Uttarakhand and Uttar Pradesh and Chandigarh Region
** Back-end infrastructure includes supply chain logistics and warehousing but not land and real estate

Press Release dated August 1st, 2013 issued by the GOI and Press Note No. 5 (2013) dated August 22nd, 2013 issued by Department of Industrial Policy & Promotion (DIPP) The Union Cabinet has, on August 1st, 2013 approved the proposal for amendment in the existing FDI policy in MBRT in paragraph 6.2.16.5(1) (iii), (iv) and (vi) of Circular 1 of 2013 - Consolidated FDI Policy.

Consequently, to give effect to the above decision the DIPP has, vide Press Note No. 5 (2013) dated August 22nd, 2013 amended paragraph 6.2.16.5(1)(iii), (iv) and (vi) of Circular 1 of 2013 - Consolidated FDI Policy.

➤ Amendments to the Foreign Exchange Management (Deposit) Regulations, 2000 [Notification No. FEMA 5/ 2000 - RB dated May 3rd, 2000] Notification No. FEMA.280/2013-RB dated July 10th, 2013 – the Foreign Exchange Management (Deposit) (Second Amendment) Regulations, 2013 – Amendment in Regulation 5

RBI has amended the Regulation 5 of Notification No. FEMA 5/ 2000 - RB to allow a Non-Resident including a Non-resident Indian (NRI) to open a single non-interest bearing Rupee account with the Authorised Dealers in India without the prior RBI approval, for limited purpose of purchase of shares on the recognized stock exchanges in accordance with Regulations 10D of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000. Measures to rationalize Foreign Exchange Outflows by Resident Indians Keeping in view the current macroeconomic situation, the RBI has taken the following measures to moderate outflows:-

• Rationalisation of Overseas Direct Investments (ODI)

Press Release No. 2013-2014/323 dated August 14th, 2013, A.P. (DIR Series) Circular No. 23 dated August 14th, 2013 and Notification No. 283/2013-RB dated August 14th, 2013 RBI has now reduced the limit of 400% of the net worth of the Indian Party to 100% of its net worth under the Automatic Route as on the date of the last audited balance sheet. This reduced limit would also apply to remittances made under the ODI scheme by Indian Companies for setting up unincorporated entities outside India in the energy and natural resources sectors. Any ODI in excess of 100% of the net

worth will be considered under the Approval Route by the RBI. This reduction in limit, however, would not apply to ODI by Navratna Public Sector Undertakings (PSUs), ONGC Videsh Limited (OVL) and Oil India Ltd (OIL) in overseas unincorporated entities and the overseas incorporated entities in the oil sector (i.e., for exploration and drilling for oil and natural gas, etc.).

The above provisions shall come into effect with immediate effect and would apply to all fresh ODI proposals on a prospective basis but would not apply to the existing JV/WOS set up under the extant regulations. Consequently, the RBI has issued a Notification No. 283/2013-RB dated August 14th, 2013 to amend the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 [Notification No. FEMA 120/ 2004 - RB dated July 7th, 2004] to give effect to the above amendments.

- **Reduction of limit from USD 200,000 to USD 75,000 under Liberalized Remittance Scheme (LRS) for Resident Individuals**

Press Release No. 2013-2014/323 dated August 14th, 2013, A.P. (DIR Series) Circular No. 24 dated August 14th, 2013 and Notification No. 282/2013-RB dated August 14th, 2013 RBI has reduced the existing limit of USD 200,000 per financial year under LRS to USD 75,000 per financial year (April - March) with immediate effect. Accordingly, AD Category – I banks may now allow remittance up to USD 75,000 per financial year, under LRS, for any permitted current or capital account transaction or a combination of both. The limit for gift in Rupees by Resident Individuals to NRI close relatives and loans in Rupees by resident individuals to NRI close relatives shall accordingly stand modified to USD 75,000 per financial year. Further, LRS should no longer be used for:-

- a) Acquisition of immovable property, directly or indirectly, outside India. Therefore, AD Category-I banks may henceforth not allow any

remittances under the LRS Scheme for acquisition of immovable property outside India.

- b) Making remittances for any prohibited or illegal activities such as margin trading, lottery etc., as hitherto. Consequently, the RBI has issued a notification no.282/2013-RB dated August 14th, 2013 to amend the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 [Notification No. FEMA 1/ 2000 - RB dated May 3rd, 2000] to give effect to the above amendments.

POLICY WATCH

- **FDI proposals worth INR 9.93 billion get government approval**

Government of India has approved 17 Foreign Direct Investment (FDI) proposals amounting to INR 9.92 billion. Approval was granted to Mylan Inc's takeover of Agila Specialties, giving the final clearance to one of the biggest FDI this year. Other projects that have been cleared include Calyx Chemicals & Pharmaceuticals, Smith & Nephew Pte Ltd and Celon Laboratories. The proposal of Jet Airways of INR 20.57 billion was recommended for consideration of the Cabinet Committee on Economic Affairs.

- **Government approves INR 20.29 billion road project in Haryana**

Government has approved a INR 20.29 billion highway project in Haryana under the National Highways Development Project (NHDP). The cost includes INR 6.36 billion towards the cost of land acquisition, resettlement and rehabilitation and other pre-construction activities. The project is for a stretch connecting Ambala with important towns such as Kaithal, Barwala, and Hisar up to the Rajasthan border, which is part of National Highway (NH) 65 from Kaithal- Rajasthan border. It also provides connectivity to NH-10.

➤ **Government clears to set up premier institution to develop solar energy technologies**

Government has approved setting up of the National Institute of Solar Energy (NISE) in Gurgaon, Haryana. The autonomous institution is an innovative idea which will accelerate the process to support induction of the latest technologies to ensure maximum cost benefit and lead to early commercialization. A national team has been set up with representation from industry, scientific community, and financial institutions to prepare a blue print for the institute.

➤ **India sign bilateral agreement with 47 countries to promote tourism**

India has signed bilateral agreements and Memoranda of Understanding (MOU) with 47 countries, a tripartite agreement between India, Brazil and South Africa (IBSA) and a multilateral agreement between India and Member States of Association of South East Asian Nations (ASEAN) for tourism cooperation. This also aims at destination development, management, promotion, marketing and capacity building. This is part of a regular exercise by the Ministry of Tourism for signing of agreements and MOUs with the important source markets to enhance mutual cooperation in the field of tourism.

➤ **RBI allows banks to issue guarantees for NRI investments**

The Reserve Bank has eased Foreign Direct Investment (FDI) norms and allowed banks to provide guarantees on behalf of NRIs to acquire shares and debentures in Indian companies. In order to provide operational flexibility and ease the procedures, it has been decided to permit banks to issue bank guarantee, without prior approval of the Reserve Bank, on behalf of a nonresident acquiring shares or convertible debentures of an Indian company through open offers/ delisting/exit offers. Such transactions should be compliant with



provisions of the Securities and Exchange Board of India.

➤ **Amritsar-Delhi-Kolkata corridor to get INR 57.49 billion from Centre**

The proposed Amritsar-Delhi-Kolkata Industrial Corridor (ADKIC), spanning seven states would get a central assistance of INR 57.49 billion for building an integrated manufacturing cluster in each state it passes through. The support would be disbursed over 15 years and used for a variety of purposes including interest subvention (subsidy), share in equity, development of trunk infrastructure and initial project development grant to ADKIC Development Corporation.

➤ **Cabinet approves setting up of two semiconductor fabrication units**

Cabinet has approved setting up of two semiconductor fabrication units at an investment of about INR 250 billion. The two proposals approved by the cabinet are led by Israel's Tower Semiconductor Ltd. (TSEM) and by Franco-Italian ST Microelectronics N.V. (STM). While TSEM is partnered by IBM, ST Microelectronics is in partnership with Hindustan Semiconductor Manufacturing Corp.

➤ **RBI permits banks to open branches without its permission**

The Reserve Bank of India (RBI) has allowed lenders to open branches, including in big cities, without its permission provided they full fill certain conditions. However, the automatic

permission is subject to certain conditions including one that stipulates that at least 25% of the total number of branches opened during the financial year must be opened in unbanked rural centres. Unbanked centres refer to locations that do not have a brick and mortar structure of any scheduled commercial bank for customer based banking transactions.

➤ **India and Latvia to sign double taxation avoidance pact**

India and Latvia will sign an agreement for double taxation avoidance. Under the agreement, business profits will be taxable in the source state if the activities of an enterprise constitute a permanent establishment in that state. It is also expected to provide Indian exporters and visitors with easier access to EU and Russian markets, as Latvia is a gateway to that region. Latvia will be joining the euro zone in January 2014. There are about 60 Latvian-Indian joint ventures in Latvia in the software and manufacturing sectors.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ **Government approves 3 electronics clusters**

Government has approved three projects worth INR 2 billion under the Electronic Manufacturing Clusters (EMC) scheme. The proposals were sent by the Electronic Industries Association of India (ELCINA) and the Madhya Pradesh State Electronics Corporation (MPSEDC). ELCINA had sent an application for a green field cluster at a projected cost of INR 1.04 billion in Bhiwadi (Rajasthan). MPSEDC had submitted applications for two projects estimated of INR 464.6 million and INR 429.2 billion, respectively, at Bhopal and Jabalpur. As per the scheme, the assistance will be restricted to 50% of the project cost, which is subject to a ceiling of INR 500 million for every 100 acres of land.

➤ **NSIC signs technology transfer project with Mauritius counterpart**

The National Small Industries Corporation (NSIC) has signed an agreement with Mauritius-based Small and Medium Enterprise Development Authority for technology transfer, marketing and finance and training exchange programmes. The pact, aimed at modernizing small and medium industries in both the countries will also include technology transfers from India to Mauritius, implementation of strategy for development of incubation centers in Mauritius, exchange of business missions, facilitate fairs and to carry out industrial surveys.

➤ **Vietnam invites Indian rubber manufacturers to set up units**



Vietnam has invited India's rubber industry to invest in their country and benefit from the vibrant natural rubber sector in Vietnam. Currently Vietnam consumes only 15% of the more than 900,000 tonnes of rubber produced in the country. India is one of the largest importers of rubber from Vietnam, which is the second largest exporter to India after Indonesia.

➤ **Coal India Limited signs FSAs with 16 private power projects**

Coal India Limited has signed agreements to supply coal to 16 private power projects. These agreements are to the tune of INR 845 billion. The projects have a generation capacity of over 14,000 MW. With these long-pending Fuel Supply Agreements (FSA) in place, seven of these projects can be commissioned as early as the next quarter (between October and December), while the rest would start power generation between January and

September next year. The ministry is pursuing similar fuel supply pacts for nine more power projects worth INR 412 billion.

➤ **Hero Group enters renewable energy sector**

The USD 5.6 billion Hero Group has announced its entry into the renewable energy sector with the launch of Hero Future Energies, a new business unit. Hero Future, an Independent Power Producer (IPP), plans to develop 1 gig watt (GW) of renewable energy by 2016-17. The company will operate across various verticals of renewable energy including wind, solar and hydro. Of these, wind and solar are the initial focus areas.

➤ **L&T Hydrocarbon bags orders worth over INR 8.07 billion**

Larsen & Toubro's hydrocarbon business has bagged orders worth INR 8.07 billion for petrochemical complexes of oil companies in India. The orders includes jobs for supply of cracking furnace modules and parts, supply of equipment, engineering, procurement and construction execution of cryogenic ethylene package, civil, structural, mechanical, electrical and instrumentation for petrochemical complexes of oil companies in India. Fabrication and assembly work for all the modules and equipment will be done at L&T's modular fabrication facility at Hazira near Surat.

➤ **TCS bags project from Macau telecom firm**

Tata Consultancy Services (TCS) has been selected to deploy a new rating and billing system for CTM, a telecom service provider in Macau. The solution, which is to be deployed in three years, will allow CTM's customers to receive faster response to enquiries and enable them to better manage their services and bills. TCS is providing assistance to CTM in developing a roadmap for ongoing future cooperation.

➤ **Wipro bags USD 125-million Deutsche Bank contract**

Wipro have bagged a multi-year contract from Deutsche Bank valued around USD 125 million. As a part of the five-year contract, Wipro would primarily provide application maintenance services to Deutsche Bank. There will a small component of application development services work as well. This is the second major client for Wipro in the Banking, Financial Services, and Insurance (BFSI) space in the past three months. In June 2013, Wipro had bagged an IT outsourcing contract worth around USD 500 million from Citigroup.







➤ **Germany to finance India's green energy corridors**

Germany has committed financial and technical assistance to India for the Green Energy Corridors. This includes Financial Assistance of Euro 250 Million as reduced interest loan. The Green Energy Corridors project will help in integrating renewable energy into the National grid. It comprises of both inter-state and intra-state schemes for evacuation of power from wind and solar projects.

➤ **India and China agree to enhance cooperation in the media sector**

India and China have agreed to initiate steps to include Media cooperation as part of 2014 celebrations being observed to commemorate friendly exchanges between the two countries. Both the countries have agreed to proactively consider steps to promote high level media exchanges and facilitation between the two nations. It has been agreed that media could play an important role in acting as a bridge for better cooperation between the two countries by highlighting the positive aspects of the bilateral relationship.

Statutory compliance calendar for the month of September 2013			
Due date	Statutory compliance under Act	Particulars	Governing Authority
			
06/09/2013	Service Tax	Payment of monthly service tax for the month of August by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of August on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/09/2013	Income Tax	Deposit of Income Tax TCS and TDS deducted in August	Central Board of Direct Tax.
	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.
10/09/2013	Central Excise	Monthly central excise return in form ER-1/ER-2 by other than SSI	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.
15/09/2013	Income Tax	Advance income tax under section 211 of Income Tax Act by corporate (second installment) and non-corporate assesses (first installment)	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of August (b) Monthly return in form 5 for employees joining Provident Fund during August 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 August	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952

21/09/2013	ESIC	Payment of ESIC contribution for the month of August	The employees' state insurance Act-1948. Ministry of labour and employment.
25/09/2013	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952
30/09/2013	Bonus	Bonus can be paid by 30th November, but usually paid before 30th September so that deduction from income tax can be claimed in the previous year itself	The Payment of Bonus Act, 1965
	Income Tax	(a) Annual returns of tax of income and wealth by companies and assesses whose accounts are required to be audited for A/Y 2014-15 (b) Audit report u/s 44AB in form 3CA or 3CB and 3CD also to be ready duly signed but not to be submitted to Income Tax department	Central Board of Direct Tax.
	Environment	Environment statement in form V to State Pollution Control Board	The Water (Prevention and Control of Pollution) Cess Act, 1977 . Central and State Pollution Control Boards
	NBFC-D	Annual statutory return in form NBS-1 by NBFC and MNBC and NBS-1A by RNBC	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.
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- Risk, Uncertainty and Change Management Services
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- Secretarial Audit.

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- Credit Rating.
- Business Asset Valuation.
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