Tax & Corporate law Bulletin

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AUGUST 2014

From the Editor's Desk...

Dear Reader,

Greetings for the season.

With the wishes of Peace and Joy we are glad to put this edition for our reader on the significant updates as … Statement of the Finance Minister on GAAR, Wal-Mart gets a clean chit in FEMA Case, New powers to fast-track prosecution, refunds: SEBI chief, Japan to invest over USD 33.58 billion in India, and read many more…

We eagerly await your feedback on the bulletin.

Yours truly,

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DIRECT TAX

NOTIFICATIONS & CIRCULARS

➢ Statement of the Finance Minister on GAAR

The Income-tax Act, 1961 was amended by Finance Bill, 2012 to add Chapter X-A titled 'General Anti-Avoidance Rule'. It became part of the law when the Finance Bill was passed by Parliament. Draft GAAR guidelines were also published. A number of representations were received against the provisions contained in Chapter X-A and an Expert Committee on GAAR was constituted to undertake stakeholder consultations and finalize the guidelines for GAAR. After examining the responses to the draft, the Expert Committee submitted its final report on September 30th, 2012 which was considered by the Government. The major recommendations of the Expert Committee have been accepted, with some modifications, and the following decisions have been taken by Government:-

- An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision prescribing that it should be "The main purpose or one of the main purposes" will be amended accordingly. The assessing officer will be required to issue a show cause notice, containing reasons, to the assessee before invoking the provisions of Chapter X-A.

- The assessee shall have an opportunity to prove that the arrangement is not an impermissible avoidance arrangement.

- The two separate definitions in the current provisions, namely, 'associated person' and 'connected person' will be combined and there will be only one inclusive provision defining a 'connected person'.

- The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision that the Approving Panel shall consist of not less than three members being Income-tax authorities or officers of the Indian Legal Service will be substituted.

- The Approving Panel may have regard to the period/ time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement. Such factors may be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement.

- The directions issued by the Approving Panel shall be binding on the assessee as well as the Income-tax authorities. The current provision that it shall be binding only on the Income-tax authorities will be modified accordingly.

- While determining whether an arrangement is an impermissible avoidance arrangement, it will be ensured that the same income is not taxed twice in the hands of the same tax payer in the same year or in different assessment years.

- Investments made before August 30, 2010, the date of introduction of the Direct Taxes Code, Bill, 2010, will be grandfathered.

- GAAR will not apply to such FIIs that choose not to take any benefit under an agreement under section 90 or section 90A of the Income-tax Act, 1961. GAAR will also not apply to non-resident investors in FIIs.

- A monetary threshold of Rs. 3crore of tax

benefit in the arrangement will be provided in order to attract the provisions of GAAR.

- Where a part of the arrangement is an impermissible avoidance arrangement, GAAR will be restricted to the tax consequence of that part which is impermissible and not to the whole arrangement.

- Where GAAR and SAAR are both in force, only one of them will apply to a given case, and guidelines will be made regarding the applicability of one or the other.

- Statutory forms will be prescribed for the different authorities to exercise their powers under section 144BA.

- Time limits will be provided for action by the various authorities under GAAR.

- Section 245N (a) (iv) that provides for an advance ruling by the Authority for Advance Rulings (AAR) whether an arrangement is an impermissible avoidance arrangement will be retained and the administration of the AAR will be strengthened.

- The tax auditor will be required to report any tax avoidance arrangement.

➢ **Clarification on issues relating to export of computer software- section 10A, read with sections 10AA & 10B of the Income-tax Act, 1961 - Free Trade Zone - Direct tax benefits**

Central Board of Direct Taxes issued Circular No. 1/2013 giving clarification on issues relating to direct tax incentive available in respect of profits derived from the export of Computer Software as per section 10A, read with section 10AA and 10B of the Income Tax Act, 1961. The major clarifications as given in the said Circular are as under:-

- The software developed 'on-site' (i.e. at the client place) and profits and gains derived from services for development of software outside India would be deemed as profit from export and eligible for tax benefit, subject to existence of a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit.

- The research and development expenditure embedded in the Engineering and Design activities related to software development would be covered under the definition of 'Computer Software'.

- Tax Benefits under the aforesaid section would not be denied solely on the ground of change in ownership of an undertaking on account of slump sale, and also, the benefits would still be available where an eligible Special Economic Zone (SEZ) unit is shifted from one SEZ to another SEZ, subject to fulfillment of prescribed conditions.

- Further, setting up of a new unit in a location where an eligible unit already exists would not make the former ineligible for tax benefits, subject to the fulfillment of the prescribed conditions.

- There is no legal requirement to maintain separate books of account for eligible units claiming benefits under aforesaid sections. However, the Assessing Officer may call for such details or information pertaining to different units to verify the claim and quantum of exemption, if so required.

Circular No. 1/2013 [F. NO. 178/84/2012-ITA.I]

RECENT JUDGEMENT

➢ **Leasing company is entitled to depreciation under section 32 on its leased out assets**

The Supreme Court in a recent judgment in I.C.D.S

Ltd v CIT, Mysore. (AY 1991-92 to 1996-97) (SC) has held that a leasing company is entitled to depreciation under section 32 on its leased out assets as both the twin conditions of 'ownership' and 'usage for business', as obligated under the said section, get satisfied, and the assessee is also eligible for higher depreciation on the ground that the vehicles were used in the business of running on hire.

Facts

The brief facts of the case are as under:-

- The assessee, a public limited company, was a Non-banking finance company (NBFC) engaged in the business of hire purchase, leasing, real estate etc.
- The vehicles on which depreciation was claimed by the assessee were paid for by the assessee and then leased out to the customers.
- Vehicles were registered in the name of lessees under the Motor Vehicles Act, 1988 (MV Act).

Moreover, the relevant clauses of the agreement between the assessee and the customer specifically provided that:-

- The assessee was the exclusive owner of the vehicle at all points of time;
- If the lessee committed a default, the assessee was empowered to re-possess the vehicle (and not merely recover money from the customer);
- At the conclusion of the lease period, the lessee was obliged to return the vehicle to the assessee;
- The assessee had the right of inspection of the vehicle at all times.
- The assessee also claimed depreciation on the said vehicles at a higher rate on the ground that they were being used in the business of running on hire.

Held

The AO disallowed the claim holding that assessee was neither the owner nor the user of these vehicles, as the only use of the vehicles was by way of leasing out to others. The Supreme Court holding in favour of the assessee, observed that the twin conditions for depreciation claim under section 32 of the Act were satisfied in the case of the assessee. The relevant observations of the Supreme Court regarding 'use of the assets' and 'owner of the assets' are as under:-

- **User test:** Use of asset for the purpose of business is the requirement laid down in Section 32 but usage of the asset by the assessee itself is not mandated. Relying upon the judgment of Shaan Finance (P) ltd (1998) 3 SCC 605, it held that since the income from hiring and leasing of the trucks is assessable as business income, it fulfills the requirement of use of the assets in the course of the business.

- **Ownership test:** Before the Supreme Court, it was urged by the Revenue that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding 1% of the original cost of the vehicle, making the assessee in effect a financer. The SC rejecting the argument of the assessee held that as long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eyes of law.

The Supreme Court concurred with the view of Tribunal that the transactions were not a 'hire purchase' transactions, instead they were transactions of 'hire' and the assessee was the owner of the assets. On the issue of registration being in the name of lessee under the MV Act, the Supreme Court held that ownership on the basis of registration is only for the limited purpose of interpreting the provisions of MV Act and the same is not a statement of law on ownership in general.

The provisions of MV Act mandate that registration should be in the name of lessee during the lease period. Therefore, no choice is left to the lessor except for allowing registration in the name of Lessee. Further, on conclusion of the lease period,

the vehicle will be registered in the name of lessor as owner. Clam for higher depreciation was also accepted based on the above reasoning.

- **'Reasons to believe' required to re-open the case processed under section 143(1)**

The High court of Delhi in a recent judgment in **CIT v Orient Craft Ltd** has held that the reopening is not justified in the absence of any 'tangible material' which came to the possession of the assessing officer subsequent to the processing of return under section 143(1). The High Court rejected the arguments of the Revenue that "reason to believe", which is the requirement under section 147 to reopen a case, have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed.

The High Court analyzing the judgment of the Supreme Court in Rajesh Jhaveri, which was relied on by the Revenue to justify the reopening, held that the fact that the intimation issued under Section 143(1) cannot be equated to an "assessment", cannot lead to the conclusion that the requirements of Section 147 can be dispensed with when the finality of an intimation under Section 143(1) is sought to be disturbed.

On facts of the present case, the High Court held that the reasons disclose that the Assessing Officer reached the belief that there was escapement of income "on going through the return of income" filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more, and this is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer.

- **Failure to file license agreement on the basis of which deduction was claimed can invoke jurisdiction for reopening the assessment**

In a recent decision of the Delhi High Court in Remfry and Sagar v CIT, it was held that non-submission of license agreement on the basis of which the claim for license fee for use of goodwill was made, amounts to non-disclosure of primary facts, even though not specifically sought by the assessing officer during scrutiny assessment proceedings, and is a valid reason for reopening an assessment.

In the present case, the AO issued notices to the assessee to initiate reassessment proceedings for various years which include reopening of the assessment after 4 years to disallow the license fee. The High Court of Delhi upholding the reopening for all the years held that whenever a claim is made for any deduction based on the terms and conditions of a document, it is the duty of the assessee to place before the assessing officer such document which would constitute the primary fact, which in the present case was the 'license agreement', as only an appraisal of the various clauses of the agreement would have enabled the assessing officer to arrive at a conclusion regarding the allowability of the license fee as business expenditure. Since the primary document or fact was not furnished, there was failure on the part of the petitioner which would attract the provisions of section 147 of the Act.

- **Expenditure on marketing knowhow allowable as revenue expenditure**

In a recent decision by High Court of Bombay in CIT v Glenmark Pharmaceuticals Ltd (Income Tax Appeal No. 2170OF 2009), the High Court has allowed the expenditure on marketing know-how as revenue expenditure.

The High Court held that, on an examination of marketing knowhow agreement, it is very clear that this agreement would lead to an improvement in its existing business resulting in higher sales and consequently higher profitability. This is so as the amounts spent on marketing knowhow would result in improving the profits of the business on the acquired brands as this knowledge would assist in improving the marketing strategy. The expenses incurred for acquiring this marketing knowhow if incurred by the respondent would be revenue and merely because it is outsourced it does not cease to be revenue expenditure.

➢ **Commissioner of Income Tax Versus Bharti Information Tech Systems (P) Ltd. - (Supreme Court of India)**

Computation of Book Profit - Minimum Alternate Tax (MAT) - Claim of deduction u/s 80HHE rejected by AO saying that since in normal computation there is no profit after carry-forward loss, deduction under Section 80HHE to the extent of Rs.1,56,33,719/- for computing book profit under Section 115JA was not admissible. - Held that: - Following the view taken by the Special Bench in Syncome Formulations (2007 -ITAT BOMBAY-H), the Tribunal in the present case came to the conclusion that deduction claimed by the assessee under Section 80HHE has to be worked out on the basis of adjusted book profit under Section 115JA and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business. The judgment of the Tribunal has been upheld by the High Court.

➢ **IRR of marketing function not a comparable for benchmarking commission income of the assessee**

In a recent judgment of Pune Tribunal in Hoganas India Pvt. Ltd. v DCIT ITA No.1463/PN/2010 (AY 2006-07), the Tribunal has held that the Internal rate of return of marketing function of the assessee cannot be considered for benchmarking commission income from the AE, as FAR of the marketing function were significantly different from the FAR of activity giving rise to the commission.

In the present case, the commission received by the assessee worked out to 1.49% of the corresponding sales achieved by the foreign AE. The Transfer Pricing Officer (TPO) noted that the commission received by the assessee was not on the standard rate. The assessee received commission of $ 30 per MT of the product sold of its AE in India, irrespective of the sale price of the product or the type of the product. The TPO observed that for the purpose of benchmarking transaction relating to receipt of sales commission, there is an internal comparable available which is the profit attributable to the marketing functions of the assessee for the products manufactured by it i.e. the internal rate of return attributable to the marketing functions of the assessee is comparable to the functions undertaken for earning the sales commission, which worked out to 4.44% and therefore the TPO proposed to adopt such rate as against 1.49%.

The assessee submitted that the net profit earned by the assessee is not only the result of the functions performed under the factory overheads and the selling & distribution expenses, but also result of the functions performed under the head "raw material cost" and accordingly while attributing the net profit of Selling & Distribution expenses, such profit should also be attributed towards the cost of raw materials. The TPO, however, made adjustment taking the difference between 4.44% and 1.49%, which worked out at Rs.28,24,085/-. On appeal, the Tribunal held that:-

- What is to be considered while adopting the comparable are the functions performed, capital utilized and risks assumed.
- The DRP as well as TPO has not questioned the nature of the functions to be performed by the parent company.
- The benchmarking adopted by the TPO as well as the DRP treating the assessee itself as a comparable is not correct, as nothing was brought on record by the DRP as well as the TPO that the assessee has to incur cost for the sales achieved by the parent company as in the case of its own marketing.
- The risk involved and asset employed by the assessee-company compared to its own marketing with that of the marketing of the parent company, of which commission is paid, is unmatched.
- Moreover, minimum risk is involved as the assessee is not directly involved in any of the sale transactions by the parent company.

- Further, the commission is paid by the parent company to its subsidiaries in the Asia region to compensate loss of profit when direct sales are made.

Thus, the ITAT held that the benchmarking done by the TPO as well as the DRP is not correct, as the parameters of the risk and the assets involved are not matching.

➢ **Changes / Amendment in Revised 3CD report - Notification No. 33/2014: Dated the July 25th, 2014**

CBDT has revised in the mid of tax season format of Tax Audit Report to be submitted in Form 3CD vide its Notification No. 33/2014, Dated: July 25, 2014. The revised report has added some new clauses to increase disclosure requirement and as well amended few clauses to further increase/improve disclosure requirements. Revised Tax Audit Report has mainly added additional reporting requirement on TDS payment and defaults.

INDIRECT TAX

Excise

➢ **Central Excise: Recovery of Confirmed demands during pendency of Stay applications**

A confirmed demand remains an order in operation till it is stayed. Mere preference of appeal itself does not operate as a stay. Hon'ble Supreme Court in the case of Collector of Customs, Bombay Vs Krishna Sales (P) Ltd 1994 (73) E.L.T. 519 has held that "As is well known, mere filing of an appeal does not operate as a stay or suspension of the order appealed against." Accordingly CBEC has issued certain directions under. Central Excise Law vide Circular No.967/01/2013-CX dated January 1st, 2013.

In terms of the said circular recovery proceedings shall be initiated against a confirmed demand. However, it is seen that recently the Madras High Court in the case of M/s Symrise Pvt Ltd Vs UOI 2013 (1) TMI 559 has given an interim stay against the Circular in terms of the following:-

"The plea taken is that the proviso to Section 129E of the Customs Act does not specify any time limit. In such view of the matter, it is pleaded that the circular overreaches the provisions."

The above decision is based on the Circular under Excise Law. It is not clear how the said circular has been tested under Customs Law. In any case, the interim orders may not be applicable outside the State of Tamil Nadu.

Value Added Tax

➢ **Value Added Tax-Case Law-Commissioner of Value Added Tax, Delhi Vs M/s Carzonrent India Pvt Ltd**

The Hon'ble High Court held that the dealer engaged in the business of leasing cars/automobiles is eligible to take input credit of VAT paid on purchase of such cars/automobiles under Section 9(1)of DVAT, 2004 since the cars were purchased for the purpose of making deemed sales i.e., transfer of right to use.

Court while discussing the List of Non Creditable goods as provided in the Seventh Schedule of DVAT, 2004 wherein S.N. 1(i) provides that all automobiles are non-creditable goods, held that the same should be read with Entry No 2 of Seventh Schedule which provides that if such non-creditable goods are purchased for the purpose of resale in an unmodified form, then the same is eligible for input credit. Court while analysing the case of leasing of cars/automobiles held that leasing activity carried out does amount to resale in an unmodified form. Court observed that "unmodified goods" would mean that goods remain in their original state and mere change / modification by ordinary wear and tear would not amount to modification in form. In other words, if the basic functionalities, structure and configuration remains unchanged, the goods would be treated as "unmodified". In the present case, since leasing of car is a deemed sale under

transfer of right to use and the cars/automobiles are provided on lease in an unmodified form, the same would qualify as creditable goods under Entry No 2 of Seventh Schedule of DVAT, 2004.

The Hon'ble Court further held that the point at which credit can be claimed is the point of purchase and the dealer is not required to spread the credit proportionately.

Customs

➢ **Valuation under Customs – Whether preloaded software classifiable separately from imported equipment– Appeal admitted by the Supreme Court**

Fact of the case

The assessee, Bharti Airtel Limited, imported telecommunication equipment. It consisted of hardware and related software. At the time of import, assessee paid customs duty only on the value of hardware.

The customs authorities alleged that the software was already preloaded in the equipment and the separate import of software in CDs was only with a view to claim exemption from duty on the software.

The assessee submitted that preloading of software was only for the purpose of factory testing and that the preloading of software was not same as etching or embedding of software.

Held

- The software was an intrinsic part of the hardware and the two cannot be separated;
- There was a single contract and price for the equipment and the software was not capable of being marketed independently;
- The imported equipment cannot get their identity and function as telecommunication equipment in the absence of the preloaded software;
- Considering the nature of equipment, the same could not be considered as specialized computer;
- Hence, there was no justification to "pull out" or disintegrate the pre-loaded software from imported equipment and exclude its value to arrive at the assessable value of equipment.

INTERNATIONAL TAXATION

➢ **Oxford University Press (TS-301-AAR-2014)**

Facts of the case

The applicant, Oxford University Press, is an Indian branch of Oxford University Press, U.K., a Department of Oxford University U.K. It is engaged in publishing, printing and reprinting of educational books for schools, universities, professional and other educational institutions or scholarly books. The applicant had appointed Ms. Geetha, a resident of Colombo, Sri Lanka and designated her as "Resident Executive". The role of Ms. Geetha was basically marketing executive that involved promotion of sale of books published by the applicant.

The monthly remuneration and reimbursement of expenses were remitted to Ms. Geetha's bank account in Sri Lanka. Issues Applicant filed an application before AAR u/s. 245Q(1) seeking ruling on whether it was required to withhold tax on amount paid to its sales executive in Sri Lanka, towards her remuneration and reimbursements? Held AAR noted that activity of sales promotion nature was carried by the executive in Sri Lanka (i.e. outside India). Further, the executive was also a resident of Sri Lanka. AAR further noted that there was no definition of 'technical services' in India-Sri Lanka DTAA.

Held

On observing the IT Act, AAR noted that no managerial, technical or consultancy services were

involved in services performed by executive and, therefore, Sec. 9(1) (vii) of the Act was not triggered. AAR further held that, executive was entitled to claim the benefit of Article 14 of the DTAA which deals with income derived from professional services and activities of an independent character. AAR states that her income was taxable only in the country in which she was rendering the services as a resident in Sri Lanka. Being resident of Sri Lanka and non-resident in India, the remuneration received by her was not taxable in India both u/s 5(2) and u/s 9(1) (vii) of the Act and Article 14 of India-Sri Lanka DTAA. AAR, thus, concluded that applicant was not liable to withhold tax on payments made to its sales executive in Sri Lanka.

- **Tesco International Sourcing Limited vs. DDIT (International Taxation) (TS-664-ITAT-(Mum.)**

Facts of the case

Tesco International Sourcing Limited, Hong Kong, (Tesco Hong Kong) was established in Hong Kong as a buying agent for Tesco group companies. It sources products for Tesco group companies and ensures that prices were competitive while maintaining the quality standards prescribed by Tesco group. The assessee, Tesco International Sourcing Limited – India Liaison Office (Tesco India LO) was established in the year 2001 to act as a communication channel between Tesco Hong Kong and the manufacturers in sourcing apparels from India and undertaking liaison activities like coordinating with manufacturers and Head Office.

The relevant assessment years are 2003-04 to 2007-08. The Assessing Officer (AO) observed that the activities of the assessee were not confined to the activities which were related to purchase of goods in India for the purpose of exports. Further, AO concluded that the activities of the assessee relate to supply chain management activities for Tesco Hong Kong and, hence, the activities of Tesco India LO were not covered under the exception provided in Explanation 1(b) of Section 9(1) (i) of the Income-tax Act, 1961. Aggrieved, the assessee objected to the draft assessment orders before the Dispute Resolution Panel (DRP). However the DRP confirmed the view of the AO stating that the AAR decision in Columbia Sportswear [TS-444-AAR-2011] was squarely applicable to the assessee's case. rejected reliance placed by the assessee on the Bangalore ITAT decision The commission agent's duty does not end on securing the orders, but he has to monitor the status and progress of the project, meaning thereby, the commission agent is responsible for ensuring supply of the software and also for receiving the payments. All these activities could be carried on only by a person who has vast technical knowledge and experience. Accordingly, the payment made to a commission agent constitutes towards technical services.

Held

The commission agent was the director of the company and also the sole foreign marketing agent. Hence, he has got responsibility to take care of business interests of the taxpayer. Hence, the office of the taxpayer can be treated as the fixed base of the commission agent, as per Article 14 (Independent Personal Services) of the tax treaty. As a director, he has every right to look into and is required to take care of the affairs of the taxpayer. Hence, the office of the taxpayer can be treated as fixed base for the commission agent.

The taxpayer would be liable to deduct tax on the payments made to a commission agent. Since tax has not been deducted under Section 195 of the Act, the payment was disallowed under Section 40(a) (i) of the Act.

FOREIGN EXCHANGE MANAGEMENT ACT

- **External Commercial Borrowings by Infrastructure Finance Companies**

Under the existing provisions of the Foreign Exchange Management Act, 1999 (FEMA),Non-Banking Finance Companies (NBFCs') categorized

as Infrastructure Finance Companies ('IFCs') by the RBI, are permitted to avail External Commercial Borrowings (ECBs), including outstanding ECBs, up to 50% of their owned funds under the automatic route. ECBs by IFCs above 50% of their net owned funds are considered under the approval route.

On a review, it has been decided by Reserve Bank of India (RBI) to enhance the ECB limit for NBFC-IFCs under the automatic route from 50% of their owned funds to 75 % of their owned funds, including the outstanding ECBs. NBFC-IFCs desirous of availing ECBs beyond 75 % of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the approval route.

Recent Cases on FEMA

- **Wal-Mart gets a clean chit in FEMA Case**

The Enforcement Directorate has given a clean chit to Wal-Mart, the world's largest supermarket chain, in a case related to alleged violation of Foreign Exchange Management Act (FEMA), a move that may pave the way for the US retailer to pursue its India investment plans more aggressively.

Earlier this week, ED wrote to the RBI, saying a case of violation could not be made out as the government has allowed FDI in multi-brand retail and also made provision for retrospective regularization of investments, sources familiar with the development told TOI.

At worst, the company can be penalized for not converting its debentures of $100 million (around Rs 450crore based on 2010 exchange rates) into equity. This will attract a maximum penalty of Rs 50crore, said sources. "Our investigation is complete and we have sent a report to the RBI. Unless the RBI feels some matter needs re-examination or some issue needs further investigation, it's a closed case for us," an ED official said, while confirming the development.

- **Clarification Regarding Acquisition and Transfer of Immovable Property in India by Foreign Nationals Press Information Bureau, Government of India, New Delhi dated July 31st, 2014**

It has come to notice of the Central Government that foreign nationals are buying immovable property illegally in some parts of the country. Many organizations and social groups have also made representations to the Central Government expressing their serious concerns in this regard. It has also been observed that foreign nationals coming to India and staying beyond 182 day on a tourist or other visa meant for a certain period are illegally acquiring immovable property in India in violation of the extant rules and regulations under FEMA.

As per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation 21/2000 (Notification No. 21/2000-RB dated May 3rd, 2000), an Indian citizen resident outside India and a Person of Indian Origin resident outside India may acquire immovable property in India other than agricultural land, plantation or a farm house. A foreign company which has established a Branch Office or other place of business in India can acquire immovable property in India which is necessary for or incidental to carrying on such activity, subject to the. Apart from above, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up.

CORPORATE LAW

- **New RBI norms likely to hurt asset reconstruction firms**

Asset reconstruction companies (ARCs) will see a reduction in business growth as banks are likely to benefit from faster resolution of bad assets under the new RBI guidelines. Banks have been increasingly selling bad assets to ARCs in a bid to clean up their balance sheets. Even as the

new guidelines bring in more discipline with better realisations for banks, ARCs will have to bear the brunt. Under the guidelines, when a bank sells an asset to an ARC, the latter has to invest 15 per cent (earlier it was 5 per cent) in security receipts (SRs). Also, the planning time for NPA realisation or initial valuation of the SRs has been cut to six months from 12 months currently, which means immediately after six months ARCs have to get the SRs to be rated by a credit rating agency.

July 6, 2014	Service Tax	Payment of monthly service tax for the month of June by all tax payers electronically
July 7th, 2014	Income Tax	Deposit of Income Tax TCS and TDS deducted in June
July 15th, 2014	Income Tax	(a) Income Tax TDS/TCS statement in form 24Q /26Q /27EQ (Other than Government) for the quarter April to June
July 30th, 2014	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
July 31st 2014	Income Tax	Annual return of income (form ITR-1 to ITR-7) and wealth (form BA) for individuals, firms etc. whose accounts are not audited under Section 44AB.

A senior official of an ARC said, more than the profitability, the guidelines will have an impact on ARCs' assets under management (AUM). According to the official, "We will see a reduction in our business as we will buy less due to the high upfront payment to banks because capital of all ARCs is quite low with limited ability to borrow money."Our volumes - the amount of NPA sold and purchased - will reduce by 50 per cent with the new guidelines. The management fees will also go up. In addition, the pricing will be quite realistic as we have to pay more to banks now," he added.

Company Law Board has issued Clarification on applicability of Section 58A(9) and Section 58AA of the Companies Act, 1956 with regard to the commencement of Section 74(2) of the Companies Act, 2013 w.e.f. June 6th, 2014. As the corresponding Sections namely 58A(9) and 58AA of the Companies Act, 1956 ceased to have effect, all Benches of the Company Law Board shall not accept further applications under sections 58A(9) and 58AA of the Companies Act, 1956. Further, all applications under section 58A(9) and 58AA of the Companies Act, 1956 prior to June 6th, 2014 pending in the Regional Benches shall be disposed of under the provisions of the said Act on top priority basis.

- **New powers to fast-track prosecution, refunds: SEBI chief**

Armed with new powers to clamp down on illegal money-pooling schemes and other defaults, SEBI said offenders can no longer ignore its orders and drag on the cases for years as the new law would fast-track action against them and ensure refund of money to investors. These additional powers, as also setting up of a special SEBI court, would ensure that fraudsters do not go scot-free and he regulator is be able to initiate recovery proceedings against them and even conduct search and seizure operations at defaulters' premises, SEBI chief U K Sinha said. After clearance from Parliament earlier this month, the government has notified the Securities Laws Amendments Act, which empowers capital markets watchdog SEBI to take action against all unregulated money-pooling schemes involving Rs 100 crore or more. The new Act gives SEBI authority to pass orders for attachment of properties, arrest and detaining of defaulters in prison and for disgorgement of ill-gotten money. It also gives SEBI access to call data records, or any other information

from any entity during investigations, while it can now conduct search and seizure operations after permission from a special SEBI Court to be set up soon. The recovery and disgorgement powers would help in facilitating refund of money to investors.

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, 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.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

- **BGR Energy bags contracts worth USD 50.29 million**

BGR Energy Systems Ltd has bagged contracts worth USD 50.29 million spread across a range of sectors, including power, water, and oil and gas. BGR Energy, a construction contract company in power projects, is diversifying into a range of sectors. It is looking at opportunities in other sectors in India

and abroad. BGR Energy has received letters of intent for two natural draught cooling towers from BHEL for their 1,330 MW Suratgarh project in Rajasthan; a contract for the supply of a 400 kV Air Insulated Switchgear Substation and a USD 6.7-million export order in the oil and gas sector. It has also been awarded a USD 5.26 million contract for construction of a water treatment plant on EPC basis.

- **JSW Steel to buy Welspun Maxsteel for about USD 0.19 billion**

JSW Steel will acquire Welspun Maxsteel for about USD 0.19 billion. This is aimed at sourcing cheaper raw material, cutting production cost and strengthening its presence in the northern and western markets. At present, Welspun buys raw material from the global market, forcing it to sell sponge iron at the cost price in the market. The steel maker will acquire the sponge iron plant, jetty and roughly 1,000 acres of land, besides absorbing the USD 0.17 billion debt of Welspun Maxsteel.

- **Brookfield to buy Unitech subsidiary for USD 0.24 billion**

CANADIAN firm Brookfield Property has entered into an agreement to acquire Candor Investments, a subsidiary of Unitech Corporate Park (UCP), for about USD 0.24 billion. UCP has entered into an agreement with an affiliate of Brookfield Property Partners for the sale and purchase of the entire issued share capital of Candor, subject to conditions, for a cash consideration of about USD 0.24 billion. Through its subsidiaries, Candor Investments holds 60% stake in six properties two in Gurgaon, three in Noida and one in Kolkata. Unitech group owns the rest of the equity.

- **ZTE to set up network operating centre in India**

Chinese telecom equipment maker ZTE Corporation plans to set up a Global Network Operating Centre (GNOC) in India. The centre will manage the networks of multiple telecom carriers across Asia and Africa. Similar centres have been set up in India by rival firms, including Nokia Solutions and Networks and Ericsson. ZTE's centre would be one of its major GNOCs in the world that will take care of managed service requirement of operators across the regions.

- **Japan's Meiji Holdings acquires Medreich for USD 0.29 billion**

Japanese pharmaceutical major Meiji Holdings has bought out Temasek-backed Medreich for USD 290 million, marking the first inbound investment in the Indian pharmaceutical sector by a Japanese company after Daiichi Sankyo's acquisition of Ranbaxy in 2008. Temasek, the private equity arm of the Singapore government, had invested USD 18.38 million in 2005 for a 25% stake in Medreich which manufactures therapeutic generic and branded drugs. Meiji, through its operating subsidiaries, Meiji Seika Pharma, has bought out 100% stake in Medreich.

- **Japan to invest over USD 33.58 billion in India**

Japan has announced doubling of its private and public investment in India to about USD 33.58 billion over the next five years. The two countries have also decided to elevate their ties to a Special Strategic Global Partnership. Japan also expressed technical readiness to provide financial, and operational support to introduce bullet trains in India.

- **Australia & India to sign nuclear cooperation agreement**

Australia and India are set to sign a nuclear cooperation agreement under which Australia will sell uranium for non-weapon use to India. Australia has about a third of the world's recoverable uranium resources and exports nearly 7,000 tonnes of it a year. This agreement would boost India's energy sector. Indian companies have already shown interest in uranium mining in Australia. After a 25-year ban, Queensland allowed commercial uranium mining.

Statuary compliance calendar for the month of August 2014

Due date	Statuary compliance under Act	particulars	Governing Authority
			
06/08/2014	Service Tax	Payment of monthly service tax for the month of July by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of July on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/08/2014	Income Tax	Deposit of Income Tax TCS and TDS deducted in July	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.
10/08/2014	Central Excise	Monthly central excise return in form ER-1/ER-2 by other that 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.
15/08/2014	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of July (b) Monthly return in form 5 for employees joining Provident Fund during July 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 July	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/08/2014	ESIC	Payment of ESIC contribution for the month of July	The employees' state insurance Act-1948. Ministry of labour and employment.
25/08/2014	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

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

BUSINESS ADVISORY

- Growth Planning
- Succession Planning.
- Strategic Decision Appraisal
- Risk, Uncertainty and Change Management Services
- Strategic Decision Implementation – National and Global Platform
- Wealth Management Services.

TAXATION SERVICES

- Direct Taxation Advisory
- Service Tax, Excise duty, VAT Registration Services
- Tax Planning Strategy– Optimum use of Corporate Tax Incentives.
- Implementing and Operating in the tax consolidation regime
- Preparation of return of Income Tax, Service Tax, Excise Duty and VAT.

AUDIT & ASSURANCE

- Statutory Audit including Tax Audit &VAT Audit
- Internal Audit and Concurrent Audit
- Management Audit and Operational Audit
- Cost Audit/Reviews
- System and process control reviews.
- Secretarial Audit.

OUTSOURCING ACCOUNTANTS

- Annual financial report preparation
- Preparation of general and special purpose statutory accounts
- Processing Payroll
- Cash management reporting
- Accounting system reviews
- Financial analysis
- General Accounting Support, as required by client.

RBI, FEMA, SEBI Services

- Setting up Liaison Office, Branch Office and Project Office.
- RBI Consulting
- Private Equity Finding Advisory.
- Project Financing.
- Credit Rating.
- Business Asset Valuation.
- Due Diligence.

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BRANCHES / AFFILIATES:-

The head quarter of Rajput Jain & associates, Chartered Accountant is located in Delhi, India. Beside this Rajput Jain & associates has presence all over India, with Nepal, and United States of America, Australia, through its associates / affiliates.

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