

# Tax & Corporate law Bulletin

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**AUGUST 2011**

### From the Editor's Desk...

Dear Reader,

Greetings for the season.

May the Indian try color always fly high, may our nation bloom with happiness and prosperity, warm wishes of the month of Indian Independence to all.

Some updates of this month are as follows: Compulsory digital signature while e-filing, Indian banking sector to be third-largest by 2025, India signs tax avoidance pact with Georgia, Power to grant registration to Large Taxpayers Units (LTU) and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

**Rajput Jain & Associates**  
Chartered Accountants



Your partners  
**for success**

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“Adapting swiftly to the  
global business environment”



## DIRECT TAX

- **Compulsory digital signature while e-filing of Income tax return for individual/HUF and firms to whom provisions of section 44AB are applicable**

The CBDT vide notification No.37/2011 dated 1<sup>st</sup> July, 2011 gives Income tax (sixth amendment) Rules, 2011. It amends rule12(3) of Income Tax Rules, 1962. It provides that a firm required to furnish return in ITR-5 or Individual /HUF required to furnish return in ITR-4 and to whom the provisions of section 44AB are applicable are required to furnish the return for assessment year 2011-12 and subsequent years in the manner specified in rule 12(3)(ii) i.e. "furnishing the return electronically under digital signature". The provisions are applicable for assessment year 2011-02 and subsequent year.

- **Section 10(15)(I) of Income-Tax Act – exemption income by way of interest etc. On bonds, Securities issued by central government**

In exercise of power conferred under section 10(15)(I) of Income Tax Act, the Central Government exempted the Income received by way of interest on Securities and bonds, Saving Certificate, etc vide notification number GSR607(E) dated 9th June, 1989. The Central Government vide notification no 32/2011 dated 3<sup>rd</sup> June, 2011 amends the notification GSR 607 (E) dated 9th June, 1989 and restricts the interest on post office Saving Bank account to the extent of 3500/- in the case of individual and 7000/- in case of Joint account.

- **Master circular- collection of direct taxes – OLTAS**

The RBI has issued the master circular number RBI/2010-11/87 dated 1st July, 2010 on the above subject which was issued to facilitate quick reference to all the extant instruction issued on the subject at one place. This master circular has been now updated with the important instruction issued till end June,

2011. This circular may also be downloaded from RBI website

- **Section 139 of the Income-Tax Act, 1961 – return Of income – exemption from requirement of Furnishing return of income for assessment Year 2011-12 where income does not exceed Rs. 5Lakh – assessee has option to avail said Exemption Order**

[F. No. 142/09/2011-so (TPL)], dated 25<sup>th</sup> July, 2011.



The Central Board of Direct Taxes had exempted a certain class of persons from the requirement of furnishing a Return of income under section 139(1) of the Income-Tax Act, 1961 for the assessment year 2011-12, vide Notification SO No. 1439 (E) dated 23-6-2011, subject to the conditions specified in the Notification. It has come to the notice of the Board that in some Income-tax offices, Returns of Income are not being received by staff on the ground that an individual with less than 5 lakh of income is not required to furnish his return of income. Necessary instructions have been issued to the officers and staffs concerned to accept Returns of Income from those taxpayers who wish to file their Return of income even if they satisfy the conditions of the above-mentioned notification.

- **Section 281 of the Income-Tax Act, 1961 – certain transfers to be void – guidelines for prior permission under section 281 to create a charge on the assets of business**

**Circular no. 4/2011 [F. NO. 402/69/2010-ITCC]  
DATED 19<sup>th</sup> July 2011**

The Board has decided that the taxpayers should apply in the prescribed form annexed hereto titled "Application u/s 281 of the IT Act, 1961" which would be available on the departmental website, as well as with the Assessing Officers. The taxpayer would have to file the form at least thirty days prior to the proposed date of transaction. The circumstances under which prior permission u/s 281 should be granted by the Assessing Officers are as follows:-

- If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the permission should be granted.
- If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the taxpayer should pay the same along with interest due thereon and then permission should be granted.
- If there is disputed demand outstanding, then the taxpayer should obtain stay for the same and indemnify the outstanding demand by way of bank guarantee or sufficient assets or by Department retaining the first charge on the assets proposed to be transferred or on which such charge is being created, to the extent of such demand. Thereafter, the permission u/s 281 would be granted by the A.O.
- If demand is likely to arise in the next six months, then the A.O. should explore the possibility of action prescribed u/s 281B. There would be only one level of intervention i.e., at the level of the range head for granting permission. The cases in which A.O. would require such approval would be where:-

(a) Value of assets being transferred or on which charge is being created, or

(b) The amount of charge being created is 10 Crores or more.

**The timelines for granting/refusing permission u/s 281 by the A.O. are as follows:**

- If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the A.O. should grant the permission within ten working days of the receipt of the application.
- If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the A.O. should grant permission within ten working days of payment as in Para 3(ii) above.
- If there is disputed demand outstanding and the taxpayer has obtained stay and indemnified the demand, then the A.O. should grant the permission within ten working days of the indemnification of the demand.
- If demand is likely to arise in the next six months and the A.O. is considering actions prescribed u/s 281B for the assets excluding the asset under consideration, then the A.O. should grant the permission within fifteen working days of the receipt of the application.
- If the taxpayer does not pay the undisputed outstanding demand or his application for stay of disputed demand is rejected or he is unable to indemnify the outstanding demand, the application shall be disposed of within a period of ten working days. In case the permission is not being granted, a speaking and reasoned order conveying refusal would be issued with the approval of the Range head within ten working days of expiry of time given to the taxpayer to pay the undisputed demand or rejection of his stay application, as the case may be. These time limits should be followed scrupulously by the A.Os.

**The validity of the letter granting permission u/s 281 would be:**

- One hundred and eighty days from the date of issue of approval, or

- Service of order of attachment u/s 281B whichever is earlier.

Once the asset is transferred or charge is created, the taxpayer should submit the documents, in this regard, to the A.O. for his record. This circular shall come into force with immediate effect.

## **INDIRECT TAX**

### **Service tax**

#### **➤ Central Government vide Notification No.42/2011-ST dated 25<sup>th</sup> July, 2011**

Central Government has exempted the taxable service provided by association of dyeing units under the category of “Club or Association Services”(Section 65(105)(zzze)) in relation to common facility set-up for treatment and recycling of effluents and solid waste discharged by dyeing units with a financial assistance from the central or state government.

#### **➤ Central Government vide Circular No.144/13/2011-ST dated 18<sup>th</sup> July, 2011**

Central Government clarified the term “Completion of Service” provided under The Service Tax Rules, 1994 and Point of Taxation Rules, 2011 to mean that all the other auxiliary activities such as measurement, quality testing etc. besides the physical part of providing prime service also to be completed, which enable the service provider to be in a position to issue an invoice. However such auxiliary activities shall not be flimsy or irrelevant grounds for delay in issuance of invoice.

#### **➤ CBEC vide letter F.No.106/Comm.(ST)/2009 dated 8<sup>th</sup> July,2011**

CBEC clarified that service tax is applicable on the amount charged by airports authorities towards user development fees & passenger service fees. The said amount shall be included while determining value of service under the category of “Airport Services”.

#### **➤ CBEC vide letter F.No.137/35/2011 dated 13<sup>th</sup> July, 2011**

CBEC clarified that service tax is applicable on activity of ONGC that of providing staff on deputation to Directorate general of Hydrocarbons (DGHC) under the category of “Manpower Recruitment or Supply Agency Services” (Section 65(105)(k)). The volume of activity undertaken or presence/absence of profit motive is irrelevant for determining applicability of service tax.

#### **➤ CBEC vide letter Dy. No.2305 / Comm. (ST) / 2011 dated 15<sup>th</sup> July, 2011**

CBEC clarified that service tax is not applicable on job work of computer embroidery under the category of “Business Auxiliary Services”(Section 65(105)(zzb)), since the said job work is manufacturing activity within the meaning of Section 2(f)of The Central Excise Act,1944 & falling under the chapter heading 5810 of Central Excise Tariff Act.

#### **➤ Central Government vide Letter F.No.137/21/2011-ST dated 15th July, 2011**

Central Government has clarified in respect of taxability of International Private Leased Circuit (IPCL) charges paid by BPOs/MNCs to services providers situated outside India under Reverse Charge Mechanism u/s.66A read with Rule 2(1)(d) of the Service Tax Rules, 1994. It clarified that:

- IPCL charges are not liable to service tax under the category of “Telecommunication Services (Section 65(105)(zzzx))” since the services are not rendered by any “telegraph authority” having license u/s 4(1) of the Indian Telegraph Act, 1885.
- The services of IPCL received from abroad is more appropriately classifiable under the category of “Business Support Services (Section 65(105)(zzzq))”

#### **➤ CBEC vide letter F.No.354/9/2011-TRU dated 12<sup>th</sup> July , 2011**

CBEC clarified that life insurance companies are not entitled to take entire CENVAT credit of input services till 30<sup>th</sup> April, 2011 as they were not liable to pay service tax on services related to investment activities. The option to discharge service tax liability @ 1% of total premium does not imply that service tax is paid on investment services also. Certain goods supplied for defense & other specified purposes from excise duty. The scope of the said notification has been widened to also include machinery, equipment, instruments, components, spares, jigs, fixtures, dies, tools, accessories, computer software, raw material and consumables required for Long Range Surface to Air missile (LR-SAM) Programme of Ministry of Defense subject to producing the certificate from Programme Director. However, this exemption is granted till 25th November, 2011 only.

**(Notification No. 34/2011- CE dated July 19th, 2011)**

➤ **Non-Tariff Notifications**

Amendments in existing forms of Central Excise returns/ new Form ER-8 introduced:

Following Central Excise returns are amended / introduced:

- Form ER-1 (monthly returns) applicable to all assesses has been amended
- Form ER-3 (quarterly returns) for small scale industries has been amended
- ER-8 has been introduced in respect of assesses availing benefit of exemption under notification No. 1/2011-CE dated February 27th, 2011.

**(Notification Nos. 15/2011 –CE dated June 30th, 2011 & 16/2011 –CE dated July 18<sup>th</sup>, 2011)**

➤ **Power to grant registration to Large Taxpayers Units(LTU)**

Earlier the application for LTU registration was supposed to the Chief Commissioner of Central Excise, LTU. However, now the same can be made to Assistant Commissioner/Deputy Commissioner of

Central Excise, LTU or to the superintendent of Service tax, LTU; as the case may be.

**(Notification No 17/2011 –CE dated July 18th, 2011)**

**Central Excise**

- **Amendment to exemption granted to goods supplied for defense and other specified purposes.**



Notification No. 64/1995 –CE dated March 16th, 1995 exempted certain goods supplied for defense & other specified purposes from excise duty. The scope of the said notification has been widened to also include machinery, equipment, instruments, components, spares, jigs, fixtures, dies, tools, accessories, computer software, raw material and consumables required for Long Range Surface to Air missile (LR-SAM) Programme of Ministry of Defense subject to producing the certificate from Programme Director. However, this exemption is granted till 25th November, 2011 only.

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➤ **Non-tariff notifications**

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**(Notification No 17/2011 –CE dated July 18th, 2011)**

➤ **Amendment to effective rate of duty on goods of Chapter 1to Chapter 25**

Notification No. 03/2006-CE dated March 1st, 2006 exempted certain excisable goods from payment of excise duty in excess of the rate as mentioned therein. The said notification has been amended to exempt goods falling under the Chapter 16 or 19(except 1905) namely food preparations including food preparations containing meat, which are prepared or served in hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet from levy of central excise duty.

**(Notification no. 37/2011-CE dated 25th July, 2011).**

➤ **Amendment to effective rate of duty on goods of Chapter 83 to Chapter 93**

Notification No. 6/2006-CE dated the 1st March, 2006 exempted certain excisable goods from payment of excise duty in excess of the rate as mentioned therein. The said notification has been amended to exempt all goods in respect of which a general license under section 406 of the Merchant Shipping Act, 1958 (44of 1958) has been granted by

the Director General Shipping from levy of central excise duty.

**(Notification No. 38 /2011 –CE dated 29th July, 2011)**

## **CORPORATE LAWS**



➤ **Filing of balance sheet and profit and loss account in (XBRL) mode**

The MCA has issued General Circular 37/2011 and has stated that in supersession of MCA's Circular No. 9/2011 dated 31<sup>st</sup> March, 2011 and 25/2011 dated 12<sup>th</sup> May, 2011, it is now mandated that certain class of companies should file their balance sheets and profit and loss account along with director's and auditor's report for the year 2010-11 onwards by using the XBRL taxonomy. The Taxonomy Business Rules, Validity tools, etc. required for preparation of these documents in XBRL format have been prepared and hosted on the website of the Ministry at [www.mca.gov.in](http://www.mca.gov.in). The Frequently Asked Questions (FAQs) about XBRL have been framed by the MCA and are annexed as annexure I with this circular for the information and easy understanding of the stakeholders. To enable filing on XBRL by stakeholders, the MCA-21 portal will have XBRL filing module by July, 2011 and the actual date will be informed separately. The coverage would be as under:-

### **Coverage in Phase I**

Following class of companies have to file the financial statements in XBRL form only from the year 2010-11:-

- All companies listed in India and their Indian subsidiaries;
- All companies having a paid-up capital of 5 crore and above
- All companies having a turnover of 100 crore and above

However banking companies, insurance companies, power companies and Non Banking Financial Companies (NBFCs) are exempted for XBRL filing for the time being.

#### **Additional fee exemption**

It is clarified that all companies covered by Phase-I and whose balance sheets are adopted in the annual general meeting held before 30.09.2011 are permitted to file up to September 30<sup>th</sup>, 2011 without any additional filing fee. However, where companies hold the annual general meeting in the month of September 2011, they will file the balance sheet within 30 days from the date of adoption in the general meeting as per section 220 of the Companies Act, 1956.

#### **Training requirement**

It is also clarified that stakeholders desirous to have training on the XBRL or on taxonomy related issues, may contact the persons as mentioned in Annexure II to his Circular.

#### ➤ **Redemption of Indian depository receipts (IDRs) into underlying equity shares**

The SEBI has issued Circular No. CIR/CFD/DIL/3/2011 whereby it has stated that earlier in order to facilitate foreign issuers to raise funds from the Indian capital markets through IDRs and enable investors in the domestic market to have investment opportunities in the securities of major multinational companies listed on well developed markets, a legal framework was created by the MCA, RBI and SEBI.

Based on that, Standard Chartered PLC had come out with its IDR issue in May 2010 and these IDRs have been listed on BSE and NSE on June 11<sup>th</sup>, 2010. It is

now decided by SEBI in consultation with RBI that after the completion of one year from the date of issuance of IDRs, redemption of the IDRs shall be permitted only if the IDRs are infrequently traded on the stock exchange(s) in India. For this purpose, IDRs shall be deemed to be “infrequently traded” if the annualized trading turnover in IDRs during the six calendar months immediately preceding the month of redemption is less than five per cent of the listed IDRs. Also, the issuer company shall test the frequency of trading of IDRs on a half yearly basis ending on June and December of every year.

It is provided that when the IDRs are considered “infrequently traded” on the above basis, it shall be the trigger event for redemption. Then, the issuer company shall make a public announcement in an English and Hindi language newspaper with wide circulation in the prescribed format (including brief details about the trigger of the redemption event, time period for submission of application and the approach for processing the applications) as well as notify the stock exchanges. The announcement shall be made within seven days of closure of the half year ending on which the liquidity criteria is tested.

A suitable format for this purpose shall be prescribed by the stock exchange(s) separately. The IDR holders may submit their application to the domestic depository for redemption of IDRs within a period of thirty days from the date of public announcement. The redemption of IDRs shall be completed within a period of thirty days from the date of receipt of application for redemption. Pursuant to the redemption, the domestic depository shall notify the revised shareholding pattern of the issuer company to the concerned stock exchanges within seven days of completion of the process of redemption. This circular is applicable with immediate effect.

#### ➤ **New rules for unlisted public companies preferential allotment/private placement**

The MCA has issued Circular No. F.No. 12/13/2011-Legal in relation to section 81(1A) of the Companies Act, 1956 whereby a public company may make preferential allotment of shares only by passing a



special resolution in general meeting. The MCA has now by this Circular has issued a new set of draft rules Unlisted Public Companies (Preferential Allotment) Rules, 2011 (which provide for greater compliance and disclosure requirements) to replace the current Unlisted Public Companies (Preferential Allotment) Rules, 2003.

The draft rules are open for public comments upto 20th June 2011. The proposed changes which bring about additional compliance requirements like, (a) Pricing – where warrants are issued on a preferential basis with an option to apply for and get the shares allotted, the issuing company shall determine beforehand the price of the resultant shares. (b) Offer document – there are some mandatory specified disclosures (detailed disclosure requirement with respect to the proposed issue, timelines, project details, financial position, etc.) required to be made by a company in the offer document as per Annexure-I to this Circular.

The offer document should be approved by the members in the General Meeting and filed with the Registrar of Companies (ROC) along with the copy of the special resolution approving the issue. (c) Dematerialization of securities – all securities issued under preferential allotment/private placements to be kept in dematerialized form. (d) Time period for private placement – issue should close within 30 days of its opening and there should be a minimum gap of 60 days between the closing of one issue and the opening of the subsequent issue. (e) Central Government approval in Private placement – for private placement of any convertible instruments (not equity shares), prior approval from Central Government would be necessary where the cumulative amount exceeds INR 50 million. (f) Compliance Certificate – the Company should obtain a certificate (for filing with the ROC along with the return of allotment) from a Chartered Accountant or a Company Secretary or a Cost Accountant in practice certifying that the issue was in accordance with the Rules.

### ➤ Processing of investor complaints against listed companies in SEBI complaints redress System (“scores”)

The SEBI has issued Circular No. CIR/OIAE/2/2011 stating that it has commenced processing of investor complaints in a centralized web based complaints redress system ‘SCORES’. The salient features of this system include centralized database of all complaints, online movement of complaints to the concerned listed companies, online upload of Action Taken Reports (ATRs) by the concerned companies, and online viewing by investors of actions taken on the complaint and its current status.

All complaints pertaining to companies will be electronically sent through SCORES. The companies are required to view the complaint spending against them and submit ATRs along with supporting documents electronically in SCORES. Failure on the part of the company to update the ATR in SCORES will be treated as non-redressal of investor complaints by the company. Submission of physical ATR will not be accepted for complaints lodged in SCORES.

For complaints forwarded to companies on or before May 20<sup>th</sup>, 2011, physical ATRs should be submitted. The user ID and password for logging into SCORES are being communicated separately to companies against whom complaints are lodged in SCORES. In case the complaints are processed by the Registrar to the Issue and Share Transfer Agent (RTI/STA) on behalf of the company, the company should indicate in the enclosed Annexure whether they require the facility to forward complaints to the RTI/STA, so that the ATR can be uploaded by them. In such cases, the name of the RTI/STA, the name of the Compliance Officer and email id should be furnished, so that the user id and password can be provided accordingly. Further, failure on the part of the RTI/STA to update the ATR in SCORES will be treated as non-redressal of investor complaints by the company.

### ➤ Guidelines for accounting of repo/reverse repo transactions – clarification

The RBI has issued Circular No. IDMD .No./29/11.08.043/2010- 11 referring to its earlier requirement on the above subject that participants should enter into bilateral master repo agreement as per the documentation finalized by fixed Income Money Market and Derivatives Association of India(FIMMDA) specifically to obviate the disputes arising out of repo transactions.

Pursuant to queries received from market participants on the issue as to whether the master repo agreement finalised by FIMMDA is mandatory for repo transactions in Government securities settled through CCIL, it is now clarified that the master repo agreement finalised by FIMMDA is not mandatory for repo transactions in Government securities settling through a Central Counter Party (CCP) [e.g. Clearing Corporation of India Limited (CCIL)], having various safeguards like haircut, MTM price, margin, multilateral netting, closing out, right to set off, settlement guarantee fund/collaterals, defaults, risk management and dispute resolution/arbitration etc. However, master repo agreement is mandatory for repo transactions in corporate debt securities, which is settled bilaterally without involving a CCP.

➤ **Integration of DIN and DPIN**

The MCA has issued General Circular No. 44/2011 dated 8<sup>th</sup>July, 2011 in relation to integration of the Director's Identification Number (DIN) issued under the Companies Act,1956 with the Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008. Currently, the MCA has been issuing two separate identification numbers as DIN to an individual for becoming a director of a company under Companies Act, 1956 and DPIN for a partner in a Limited Liability Partnership under the Limited Liability Partnership (LLP) Act, 2008.

To avoid this duplicity and give ease to the stakeholders, the MCA has decided to issue only one identification number to an individual for both the purposes. Hence, with effect from 9th July, 2011 no fresh DPIN will be issued and any person, who desires to become a designated partner in an LLP has

to obtain DIN by filing e-form DIN-1. If DIN has been allotted, it shall also be used as DPIN for all purposes under the LLP Act, 2008. Similarly, if a person has been allotted DPIN, it will also be used as DIN for all purposes under Companies Act, 1956. And, if a person has been allotted both DIN and DPIN, the DPIN will stand cancelled and DIN will be used as DIN as well as DPIN for all purposes under the LLP Act, 2008 and The Companies Act, 1956.

It is also stated in this Circular that in terms of Circular no.32/2011 dated 31st May, 2011, the MCA has made Income Tax Permanent Account Number (PAN) mandatory for obtaining DIN for Indian nationals. Further, all existing DIN holders, who have not furnished their PAN at the time of obtaining DIN, are required to furnish their PAN to the MCA by filing e-form DIN-4 by 30September, 2011. Similarly, all DPIN holders, who had not furnished their PAN at the time of obtaining DPIN, are required to furnish their PAN to the Ministry by filing e-form DIN-4 by 30September, 2011, failing which their DPIN/DIN will be disabled and they will also be liable for penalty. One may refer to the above citation for further details.

**FEMA**



- **Liberalisation / rationalisation of overseas direct investment (ODI)A.p. (DIR series) circular no. 73 dated June 29, 2011Ref.: A.P. (DIR series) circular no. 69 dated May 27, 2011**

With a view to restating the various provisions relating to transfer by way of sales of a joint venture (JV) or wholly owned subsidiary (WOS) outside

India with and without write off, the Reserve Bank of India (RBI) has on June 29, 2011 issued circular consolidating the existing guidelines in this regard.

➤ **Transfer by way of sale of shares of a JV /WOS**

An Indian Party, without prior approval of RBI, may transfer by way of sale to another Indian Party (which complies with the provisions of Regulation 6 of FEMA Notification 120/RB-2004 dated July 7, 2004) or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

- The sale does not result in any write off of the investment made.
- The sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- If the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
- The Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
- The overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- The Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

➤ **Transfer by way of sale of shares of a JV / WOS involving write off of the investment**

Indian Parties may disinvest, without prior RBI approval in the following cases where the amount repatriated on disinvestments less than the amount of the original investment, subject to the conditions listed above at items (ii) to (vi):

- In cases where the JV / WOS is listed in the overseas stock exchange;
- In cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than ` 100 crore;
- Where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million and;
- Where the Indian Party is a listed company with net worth of less than ` 100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

An Indian Party, which does not satisfy the conditions stated above, shall have to apply to RBI for prior permission. Foreign Direct Investment (FDI) in India - Issue of equity shares / preference shares against import of capital goods / machineries / equipments and Pre-operative/pre-incorporation expenses, under the Government route.

➤ **A.P. (DIR series) circular no. 74 dated June 30, 2011**

Consequent to the amendment in Consolidated FDI Policy issued by the Department of Industrial Policy & Promotion vide Circular 1 of 2011 dated March 31, 2011, RBI has decided to permit issue of equity shares / preference shares for the following categories of transactions under the Government route of the FDI scheme subject to compliance of the conditions prescribed in the aforesaid circular:-

- Import of capital goods/ machineries/equipments (including second hand machineries),
- Pre-operative/ pre-incorporation expenses (including payments of rent, etc.)

All requests for conversion should be accompanied by a special resolution of the company. Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

➤ **Buyback / Prepayment of Foreign Currency Convertible bonds (FCCBS) A.P. (DIR Series) Circular No. 75 dated June 30, 2011**

RBI has, on June 30, 2011, extended the time limit for premature buyback of FCCBs from June 30, 2011 to March 31, 2012 subject to compliance of all the terms and conditions of buyback/ prepayment of FCCBs, as prescribed. Further RBI has liberalised the



procedure for such buy-back as described in the circular in detail.

➤ **Redemption of FCCBs A.P. (DIR Series) Circular No.01 dated July 04, 2011**

RBI has, on July 4, 2011, allowed the Indian companies to refinance the outstanding FCCBs subject to compliance with certain conditions prescribed in the circular.

Restructuring of FCCBs involving change in the existing conversion price is not permissible. However, proposals for restructuring of FCCBs not involving change in conversion price will be considered under the approval route depending on the merits of the proposal. The above circular is available on RBI website.

➤ **Facilitating rupee trade – hedging facilities for nonresident entities A.P. (DIR series) circular no. 03 dated July 21, 2011**

In order to facilitate greater use of Indian Rupee intrude transactions, RBI has issued guidelines to allow on-resident importers and exporters to hedge their currency risk in respect of exports from and imports to India, invoiced in Indian Rupees, with Authorised Dealers in India. The detail guidelines are given in the above referred circular.

**POLICY WATCH**

➤ **Comprehensive economic partnership agreement (CEPA) between India and Japan comes into force**

Indian professionals and producers of textiles, pharmaceuticals and a number of other goods are set to gain significantly as India and Japan begin to implement a Comprehensive Economic Partnership Agreement (CEPA). The pact seeks to abolish import duties on most products, increase access for Indian professionals and contractual service suppliers to the Japanese market and liberalize investment rules. The CEPA will bring immediate gains to exporters of textiles, seafood and spices to Japan as duties on these products would be eliminated from the first day, according to an official release. It would ultimately result in removal of duties on almost 90% of products traded between the two countries. Other sectors that would gain from the CEPA through lower duties include agricultural products such as mangoes, citrus fruit, spices, instant tea, most spirits, petrochemical & chemical products, cement and jewellery. The CEPA signed in February this year is expected to boost trade to \$25 billion by 2014 from \$10.36 billion in 2009-10.

➤ **Private equity fund flow for emerging companies**

SEBI'S decision to increase the threshold limit for open offer from 15 to 25% will provide the emerging

conglomerates, especially those in cash guzzling sectors such as infrastructure, better flexibility to tap private equity and institutional investors. This will increase the flexibility to attract investments by BSE-500 companies. The number of investment deals in these firms could go up. The move to increase the open offer threshold is a movement towards international standards. India's mid-cap story, which has seen the emergence of several aggressive growth firms, has faced fund-raising constraints in a bearish market with beaten down stock valuations. Global private equity funds, which often like to make a minimum investment of \$75-\$150 million, have been keen on the mid-cap firms but forced to sit out as promoters did not fancy the investor triggering the open offer.

➤ **Australia keen to collaborate with India in vocational training**



Australia is keen to work with India in the establishment of Sector Skills Council. It wants to explore possibilities for collaboration to share expertise and experiences. The new bilateral Australia India Education Links website was one way to share experiences; the portal supports further education and training collaboration between the two countries' education and training institutions, business and industry. The Bureau for Vocational Education and Training Collaboration was a forum for facilitating linkages in the skills area. There is enormous value in industry collaboration as the two nations seek to build the high skilled and well trained workforces needed to meet the demand in of the growing economies.

➤ **PPP appraisal panel's approves to Rs 50 billion road projects**

To boost investments in the infrastructure sector, the finance ministry has expedited approvals to projects under the Public-Private Partnership (PPP) mode, especially in road transport and highways. The finance ministry informed that the PPP Appraisal Committee (PPPAC) spearheaded by Economic Affairs Secretary has approved 10 road projects with a total cost of Rs 50 billion. The PPP proposals of the ministry of road transport and highways, cleared by the committee in its 45th meeting, includes four-laning of the Vijayawada-Machilipatnam section of National Highway 9 in Andhra Pradesh on a build-operate-and-transfer (toll) basis under the third phase of the National Highways Development Project. The project cost is Rs 6.06 billion.

➤ **India amending double taxation avoidance agreement**

The government is amending the Double Taxation Avoidance Agreement it has with four countries and is also negotiating with 16 entities to improve information sharing on black moneys part of the Tax Information Exchange Agreement. Finance ministry understood that many domestic companies would make investments abroad as the Indian economy becomes more integrated with the global economy. This would require avoidance of double taxation by both the countries involved in the trade. The finance ministry stated that in order to improve sharing of information on black money, the government is negotiating with 16 entities and the agreements would be completed by October this year.

➤ **12th five-year plan to aim at 9% growth rate**

The next five-year plan is going to maintain its target growth rate at 9% despite recent events pointing to apprehensions of a downturn in western economies. In an earlier meeting, the planning commission had proposed a range of 9-9.5% for the next plan; however it has decided to stick with 9%. The ongoing eleventh plan had also aimed at an average growth rate of 9% during its inception. However, it had to be scaled down to 8.1% during the mid-term appraisal of the plan primarily due to the adverse impact of the

global economic downturn. The approach paper on the 12th five year plan will suggest continuing the trend of expenditure adapted by the government – to prioritize allocations to the social sector like health, education, agriculture, water and infrastructure.

➤ **India signs tax avoidance pact with Georgia**

India has signed a Double Taxation Avoidance Agreement (DTAA) with Georgia. This agreement provides a mechanism for effective exchange of information between the tax authorities of two countries, including exchange of banking information. The DTAA was signed by the Indian Government and Ambassador of Georgia to India, on behalf of the Government of Georgia. Under this DTAA, business profits will be taxable in the source State if the activities of an enterprise constitute a Permanent Establishment (PE) in the Source State. The Agreement provides for fixed place PE, building site, construction and installation PE, service PE, insurance and agency PE. Dividends, interest and royalties and fees for technical services income will be taxed both in the country of residence and in the country of source.

➤ **Finance Ministry to launch a new scheme to refund service tax on goods**

The country's biggest exporters, such as Bajaj Auto, Reliance Industries, Welspun, will soon receive electronic refund of service tax on inputs in goods exported. The finance ministry is all set to launch a new scheme to refund service tax to exporters on the lines of duty drawback scheme for tangible imports used to produce goods. Draft scheme is ready and will be launched after getting inputs from the industry. The scheme, which is based on the architecture suggested by panel headed by planning commission, will allow quick return of service tax to exporters. The new scheme will reimburse service tax to exporters on the same lines as the duty drawback for goods. The duty drawback rates are fixed by an expert panel every year based on changes in the tax rates in the annual budget. The service tax will be refunded through Indian Customs EDI System.

**INDUSTRY WATCH & CORPORATE HIGHLIGHT**

➤ **Mobile Net users to touch 46 million by September, 2011**

The number of subscribers using their mobile phones To access Internet will touch 46 million in



September, 2011. India is witnessing a healthy growing usage of mobile Internet. The convenience of accessing internet on the move coupled with good tariff plans and connectivity has ensured growth of the segment. Going by the quarter-on-quarter growth, the mobile Internet sector will continue to grow at a fast pace. This is good news for operators that are struggling with declining Average Revenue per User (ARPU). Operators get less than Rs 100 a month from subscriber at present. There are about 40 million mobile Internet users as of June 2011 of which about 30 million are termed as active users.

➤ **Indian banking sector to be third-largest by 2025**

The Indian banking sector is poised to become the world's third-largest in terms of assets over the next 14 years. The domestic banking industry is set to see exponential growth in the coming years, with its assets poised to touch \$28,500 billion by 2025, compared with the current \$1,350 billion (2010), as per the report by Indian Banks' Association (IBA). The report was released on the eve of the three-day IBA-FICCI-BCG bank summit. The report adds that China would overtake the US as the world's largest banking industry by 2015. It is expected the asset size of Chinese banks would be nearly \$30,000 billion,

while that of the US would be around \$28,000 billion.

➤ **Continental AG to invest Rs 3.30 billion to double capacity**

German tyre manufacturer and auto component supplier Continental AG announced an investment of around 50 million Euros (approximately Rs 3.30 billion) over the next two years to ramp up capacity at its existing production facilities and foray into the radial tyre segment in the country. The company, which recently acquired Modi Tyres company, will make the fresh investments at the latter's Modipuram facility. There has been a rising demand for vehicles with high quality tyres as well as premium technology in India. Continental plans to ramp up the capacity at the Modipuram plant to produce 200,000 units of radial tyres for commercial vehicles.

➤ **German solar inverter to set up manufacturing base in India**

REFUsol GmbH, a manufacturer of solar inverters, will start local production of its products from the end of this year and first deliveries by early 2012. This manufacturing facility will be located in Pune, where it has already set up a customer support office. REFUsol displayed some of its light, compact and powerful string inverters at the recently concluded 5th Renewable Energy India 2011 Expo in New Delhi. Its three-phase string inverters with power classes from 8 to 20kW are suitable for indoor and outdoor use and for installations ranging from small rooftop systems to large solar parks. Featuring an MPP-tracking and a wide input voltage range of up to 380 to 850V, the solar inverters achieve a peak efficiency of up to 98.2%, even at low irradiation levels.

➤ **July, 2011 exports raise 81%**

India's exports surged nearly 82% in July as demand soared for engineering goods, petroleum products and readymade garments. India's exports grew a record 37.6% to \$246 billion in the 2010/11 fiscal year as Asia's third-largest economy pulled away from the 2008 global financial crisis-led slowdown

and set its sights on developing new export markets in the emerging world. The sector has shown strong growth in this fiscal year as well, with exports racking up high double-digit growth in consecutive months and notching \$29.3 billion in July alone, in line with the Asian giant's rising global economic ambitions. Indian exports were badly hit in 2008, after the global financial downturn crimped demand for Indian goods in premier overseas markets like the U.S. and Europe.

➤ **Gujarat SEZs register 24% rise in exports**

The functional SEZs in Gujarat have exported products worth Rs 612.5 billion in the first four Months of the current financial year, an increase of 24% over the same period of last financial year. This included contribution of Reliance SEZ in Jamnagar, which exported petroleum products worth Rs 531.81 billion. This was about 87% of the total exports of SEZs located in Gujarat. The Kandla Special Economic Zone (KASEZ) reported a growth of 33% in exports to the tune of Rs 10.77 billion in the first four months of the current financial year. The growth of SEZs in Gujarat has brought in an investment of Rs 880 billion in the last four years. More investments are expected, particularly in the SEZs at Mundra and Dahej & also at the Sterling SEZ and other notified SEZs which are at various stages of implementation.

➤ **Piramal picks 5.5% in Vodafone's India unit for Rs 28.56 billion**



Flush with funds, Piramal Healthcare is set to fork out Rs 28.56 billion for a 5.5% stake in Vodafone's India unit. With this, Vodafone has now parked over 26% of the company's shares with Indian investors in line with foreign direct investment guidelines for the

telecom sector. The deal values Vodafone India at \$11.6 billion. Piramal had last year sold its domestic formulations business for Rs 170 billion. The Vodafone transaction contemplates various exit mechanisms for Piramal, including both participation in a potential initial public offering of Vodafone Essar Limited and a sale of its stake to Vodafone.

- **L&T gets \$889 million for hydrocarbon projects in UAE, Thailand Larsen & Toubro (L&T)**



## **L&T Infotech**

The \$11.7 billion engineering conglomerate has bagged three international orders totaling \$889 million for hydrocarbon projects. Pipeline for hydrocarbon projects is largely good. Energy sector has picked up in the Gulf and L&T are bidding for a number of tenders in UAE, Qatar, Oman, and Saudi Arabia. In India, order inflow from refiners is slow. But ONGC is likely to award orders worth Rs 70 -80 billion by September and L&T would be bidding for all of them. The orders won by the company include Abu Dhabi Gas Industries' Habshan-Ruwais-Shuweihat Gas Pipeline Project worth \$189 million, scheduled to be completed in 24 to 26 months.

- **Forex reserves rise by \$2.29 billion**

The country's foreign exchange reserves increased by



\$2.294 billion to \$316.801 billion for the week ended July 22, according to the Reserve Bank of India. The reserves have gone up in the week after posting a drop of \$112 million to \$314.507 billion in the previous week ended July 15. The increase in reserves is mainly on account of currency revaluation. In the week under consideration, foreign currency assets went up by \$2.227 billion to \$284.526 billion. Foreign currency assets expressed in US dollar terms include the effect of appreciation or depreciation of non-US currencies such as the euro, sterling and yen, held in reserves.

- **FDI jumps 77% in April-May 2011**



Foreign direct investment during April-May 2011 has registered a 77% rise at \$7.78 billion, from \$4.39 billion in the corresponding year-ago period. Services sector, which accounts for a chunk of FDI flows, registered 55% rise to \$910 million during April-May this fiscal, according to the Ministry of Commerce data. In 2010-11, foreign investment in the services sector declined to \$3.29 billion from \$4.39 billion in 2009-10. The drugs and pharmaceutical segment attracted maximum investment during the April-May period at \$2.94 billion. Power came second notching an investment of \$582 million, followed by automobile (\$412 million), construction (\$252 million) and housing and real estate (\$249 million).

- **Essar acquires Zimbabwe steel firm for \$750million**

Essar has completed the acquisition of Zimbabwe Iron and Steel Company (ZISCO) with a commitment of \$750 million and would take over all



liabilities of the company and Zimbabwe government. As per the agreement, ZISCO will be divided into two new entities Newsy Steel Private Limited and Newsy Minerals Private Limited. Essar Africa Holdings, the African arm of Essar Group, will own 60% in the steel joint venture and 80% in the mining company, it said in a statement, adding that rest of the stake will be held by the Government of Zimbabwe (GOZ). This closes the transaction process that started in August 2010 with a public.

➤ **Five companies granted Maharatna status**

The Government stated that out of the seven Central Public Sector Enterprises (CPSEs) which have applied for the coveted Maharatna tag, five companies has been granted the status, providing them greater financial and operational autonomy. The five state-owned units which were accorded the status were ONGC, NTPC, IOC, SAIL and CIL. BHEL and GAIL are the other tophus which have applied for the status.

To be eligible for the grant of the Maharatna status, the company should have an average turnover of over Rs 250 billion, average annual net worth of more than Rs 150 billion and average annual net profit of over Rs 50 billion during the last threeyear. The government had introduced the Maharatna status for CPSEs in February 2010. The proposals for grant of the Maharatna tag to CPSEs are required to be initiated by the concerned ministry/department and forwarded to the Department of Public Enterprises (DPE).

➤ **Sahara India Power Corp partners Korea East-West Power Co to set up 6,000-mw power projects**

Sahara India Power Corp Ltd will set up 6,000-mw power plants in India in association with Korea East-West Power Co Ltd. The companies have entered into an agreement to jointly participate in tariff-based bidding for ultra mega power projects and other opportunities in India toad up to a total capacity of 6000-mw. The two companies would explore

possibilities of power generation through thermal, hydro and solar resources. The two companies are already setting up a 1,320-mw power generating plant at Titlagarh in Orissa with an investment of about Rs 80billion. The association between Korea East-West Power Co and Sahara India Power Corporation Ltd. would bring in international expertise in power generation.







➤ **Trivitron healthcare to invest Rs 1 billion in 2011**



MEDICAL-equipment maker Trivitron Healthcare plans to invest Rs 1 billion this year in expanding manufacturing capacity and acquisitions, as it looks to step up indigenous production. The company, which received finance from a couple of private-equity funds in 2008, may also look at a second round of funding towards year-end. The Rs 3.5 billion Trivitron owns a 25-acre medical-technology park at Irungattukottai, near Chennai, which began operations last year. It can house 10 facilities. The park currently operates one factory for manufacturing ultrasound and colour Doppler machines (under a joint venture with Hitachi Aloka). The company also has a 70,000-sq.-ft facility in Chennai for manufacturing hematology reagents, ECG machines and modular operation theatres. These will eventually shift to the larger Irungattukottai Park.

**Statutory compliance calendar for the month of August 2011**

Due date	Statutory compliance under Act	particulars	Governing Authority
			
06/08/2011	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
07/08/2011	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.
10/08/2011	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-ALMI	Reserve Bank of India.
15/08/2011	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
21/08/2011	ESIC	Payment of ESIC contribution for the month of July	The employees' state insurance Act-1948. Ministry of labour and employment.
25/08/2011	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952

**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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