

Tax & Corporate law Bulletin

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MAY 2011

From the Editor's Desk...

Dear Reader,

Greetings for the season.

May this month brings new hopes and more prosperity to all our readers. With the wishes of Peace and Joy we are glad to put this edition for our reader on the significant updates as ...

Updates for the month of MAY are as follows: Substitution of income tax return forms, Fixed charges for hire of vehicles not "rent" for Section 194-I TDS, Sending of balance sheet, etc. by electronic mode and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & Associates

Chartered Accountants



Your partners
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**For further details,
Please contact....**

CA. Swatantra Singh

Singh.swatantra@carajput.com

CA. Parmeshwar Mahaseth

carrier@carajput.com

CA. Navneet Gupta

info@carajput.com

CA. Manoj Kumar Singh

support@carajput.com

**Corporate office: P-6/90,
Connaught circus,
Connaught Place,
New Delhi-110001**

**Phone No: - 011- 23343333,
011-43520194**

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“Adapting swiftly to the
global business environment”



➤ **Financebill, 2011-12**

The important reliefs are as under -

1. The proposal to provide lower tax of 15% on dividend received by Indian companies from the Foreign subsidiary companies in which the Indian companies holds more than 50% of share capital. In order to grant the benefit to overseas joint ventures with Indian partnerships a further relaxation in ownership pattern of foreign subsidiary is proposed lowering the holding requirement in the Foreign Company from 50% to 26%.
2. The consequent amendment in section 40A (9) to enable the employer to get the deduction of employers contribution to pension scheme.
3. The concessional rate of CVD and SAD in certain items proposed in custom and Central Excise duties to encourage domestic manufacturer.
4. To provide Service Tax exemption from new levy on health services in entirety both in respect of service provided by hospitals as well as by way of diagnostic test.
5. The point of taxation rule in Service Tax shifting the payment of service tax from cash basis to accrual basis will be effective from 1st July, 2011 instead of 1st April, 2011.

➤ **Explanatory notes to the provisions of finance act 2010**

The finance Act 2010 as passed by the Parliament received the accent of the President on May 8th, 2010 and has been enacted as Act No. 14 of 2010. The CBDT issued the circular no. 1/2011 dated 6th April, 2011 explaining the substance of the provisions of the Act relating to the Direct Taxes.

➤ **Substitution of income tax return forms**

The notification No. 18/2011 dated 5th April, 2011 gives Income Tax (3rd Amendment) Rules, 2011. The Rule came in to effect from 1st April 2011. It amends Rule 12 substituting the new Income Tax Return forms for assessment year 2011-12. Major changes are as under:

- The Income Tax Return Form SARAL II replaced by the new ITR form SAHAJ (ITR – 1)
- New Income Tax Return Form prescribed named SUGAM – (ITR – 4S) for the assesseees who are covered by the provisions of Section 44AD and section 44AE.
- Income Tax Return Form ITR 8 is deleted.

The new Income Tax Return form SAHAJ and SUGAM are also, in the similar manner in case of other Income Tax Returns, not to be accompanied by any annexure, proof of tax or reports, etc.

TDS – Processing of statement of Tax Deducted at Source – Procedure for regulating refund of excess amount of TDS. The CBDT vide circular No. 02/2011 dated April 27th, 2011 clarified the procedure for regulating refund of excess amount of TDS deducted and/or paid.

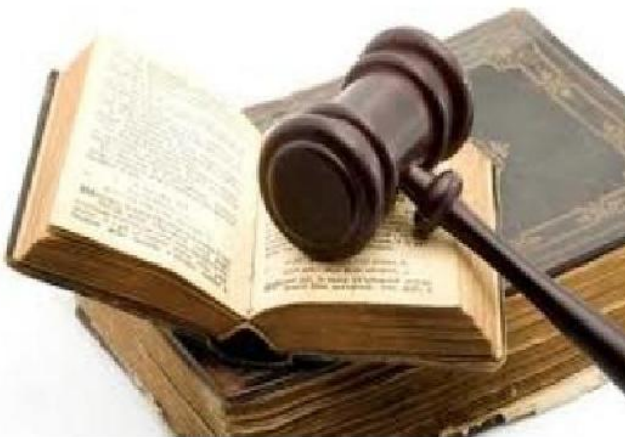
Presently, the procedure for regulating the refund of amount paid by the deductor in excess of the TDS and / or deductible is governed by the board Circular No. 285 dated 21/10/1980. Subsequently to the issue of this circular no. 285, new sections of TDS have been introduced under chapter XVII B of the Income-Tax Act.

In order to include / prescribe the procedure for the new sections also, the board vide Circular No. 2/2011 dated 27/04/2011 clarified and issued the procedure for regulating refund of amount paid in excess of TDS and / or deducted in respect of TDS on residents covered under section 192 to section 194LA of the Income-Tax Act, 1961. This circular will not be applicable to TDS on non-residents falling under

section 192, section 194E and section 195 which are covered by Circular No. 07/2007 issued by the board.

It also clarified that this circular will be applicable for claims of refunds for the period up to 31/03/2010. The provisions of section 200A of the Income-Tax Act prescribes the processing of statement of TDS and issue of refund w.e.f. April 1st, 2010.

RECENT JUDGEMENTS



➤ **No Section 271(1)(c) penalty for failure to disallow u/s 14A**

DCIT vs. Nalwa Investments Ltd (ITAT Delhi) dated May 29th, 2011

Fact of the case:

For AY 2005-06 the assessee had investments in shares of Rs. 37 crores on which it earned tax-free dividend. The assessee also had borrowings of Rs. 33 crores on which it paid interest of Rs. 1.10 crores. However, no disallowance u/s 14A was made. The AO computed the disallowance at Rs. 95 lakhs and levied penalty under Explanation 1 to 271(1) (c) on the ground that there was no satisfactory explanation for not attributing expenses to tax-free income. This was deleted by the CIT (A). On appeal by the department, HELD dismissing the appeal.

Held:

Though the computation of Section 14A disallowance was not made, the figures of dividend and interest were stated in the P&L A/c. Even the tax auditors did not state that section 14A disallowance should be made. As there is no allegation by the AO that there was collusion between the auditor and the assessee to ignore Section 14A, it cannot be said that the explanation was not bona fide. Further, as Rule 8D was not enacted at the time, segregation of expenditure relating to tax-free income would be disputable and lead to bona fide difference in opinion. So, penalty u/s 271(1)(c) cannot be levied.

➤ **Even fixed charges for hire of vehicles not “rent” for Section 194-I TDS**

Ahmedabad Urban Development Authority vs. ACIT (ITAT Ahmedabad) May 6th, 2011

Fact of the case:

The assessee hired cars on fixed rent payment and deducted TDS u/s 194C at 2% on the basis that it was a “works contract”. The AO & CIT (A) held that since cars were “plant”, tax ought to have been deducted u/s 194-I at 10%. The assessee was held liable for the short-fall of 8% in TDS u/s 201. On appeal by the assessee, held allowing the appeal

Held:

Section 194C defines “work” to include “carriage of goods and passengers by any mode of transport other than railways” while Section 194-I defines “rent” to mean payment for use of “plant” (which is defined in Section 43 to include vehicles). As the cars were owned and maintained by the contractor and all expenditure was borne by the contractor, the contract was for “carriage of passengers” for which the assessee paid a fixed amount. Therefore, the payment of vehicle hire charges fell within the scope of Section 194C and was not “rent” for Section 194-I.

➤ **Interest on Tax refund not “effectively connected” with PE**

ACIT vs. Clough Engineering Ltd (ITAT Delhi – Special Bench) dated May 6th, 2011

Fact of the case:

The assessee, an Australian company, had a PE in India from which it carried on business in India. The assessee received interest on income-tax refund of TDS. While the assessee claimed that the interest was taxable on gross basis at 15% under Article XI (2) of the DTAA, the AO & CIT (A) claimed that the interest was “directly connected with the PE” and so assessable under Article VII. On appeal, the issue was referred to the Special Bench.

Held:

Under Article 11(4) of the DTAA, interest from indebtedness “effectively connected” with a PE of the recipient is taxable under Article 7 and not under Article 11. Though the interest was connected with the PE in the sense that it has arisen on account of TDS from the receipts of the PE, it was not “effectively connected” with the PE either on the basis of asset-test or activity-test. The payment of tax was the responsibility of the foreign company and the fact that it was discharged by way of TDS did not establish effective connection of the indebtedness with the PE. In order to be “effectively connected”, it is not necessary that the interest income has to be necessarily business income in nature. Even interest assessable under “other sources” can qualify.

INDIRECT TAX

Service tax



➤ **Synopsis of notifications, circulars & letters:-**

Central Government vide Notification No. 25/2011-ST has made following amendments to the Point of Taxation Rules, 2011.

Point of Taxation shall be the time when invoice for service provided or to be provided is issued.

In case the invoice is not issued within 14 days of completion of service, Point of Taxation shall be the date of the completion of such service.

In case service provider receives payment before issuance of invoice or completion of service, the Point of Taxation shall be the receipt of payment to the extent of such payment.

In case the service provider receives any advance towards provision of taxable service, the Point of Taxation shall be the date of receipt of each such advance. Readers may refer to illustration given in Letter F. No. 341/34/2010-TRU dated March 31st, 2011 issued by the Ministry of Finance, Government of India.

In Rule 4, the term “change in effective rate of tax” is substituted for words “change of rate of tax”, “change in tax rate” & “change of tax rate”. The term “change in effective rate of tax” is defined to include a change in portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made there under. In case of continuous supply of service:-

- Point of Taxation shall be the time when invoice for service provided or to be provided is issued.
- In case the invoice is not issued within 14 days of completion of service, Point of Taxation shall be the date of the completion of such service.
- In case service provider receives payment before issuance of invoice or completion of service, the Point of Taxation shall be the receipt of payment to the extent of such payment.
- Where provision of service is determined periodically on the completion of an event in terms of a contract, which requires the service

receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

- In case the service provider receives any advance towards provision of taxable service, the Point of Taxation shall be the date of receipt of each such advance. Point of Taxation shall be the date on which payment is received or made, as the case may be, in respect of Services covered under Rule 3(1) of Export of Service Rules, 2005. Services notified u/s. 68(2) for reverse charge mechanism. Individual, proprietorship or partnership firms providing taxable services of:-

- a) Architects (Section 65(105) (p)).
- b) Interior Decorators (Section 65(105) (q)).
- c) Practicing Chartered Accountants (Section 65(105) (s)).
- d) Practicing Cost & Works Accountants (Section 65(105) (t)).
- e) Practicing Company Secretaries (Section 65(105) (u)).
- f) Scientific & Technical Consultancy (Section 65(105)(za)).
- g) Legal Services (Section 65(105)(zzzzm)).

In respect of exports of services where payment is not received within the period specified by RBI, the Point of Taxation shall be the time when invoice for service provided or to be provided is issued.

In case the invoice is not issued within 14 days of completion of service, Point of Taxation shall be the date of the completion of such service. In respect of services notified u/s 68(2) where payment is not made within a period of 6 months of the date of invoice, the point of taxation shall be the time when invoice for service provided or to be provided is issued.

In case the invoice is not issued within 14 days of completion of service, Point of Taxation shall be the date of the completion of such service. In case of associated enterprises where the person providing the service is located outside India, the Point of Taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier. The provisions of these rules are not applicable in case where provision of services is completed or invoices are issued prior to 1st April, 2011. In case where provision of services is completed or the invoices are issued prior to 30th June, 2011, the Point of Taxation, at the option of taxpayer, shall be the date on which the payment is received or made, as the case may.

Central excise



➤ **Tariff Notification**

- **Laminated jute bags**

(Corrigendum to Notification No. 30/2011-C.E. dated 20th April, 2011)

Notification No. 30/2004-C.E. dated 9th July, 2004 providing exemption from whole Excise duty to certain goods falling under Chapters 50 to 63 has been amended *vide* notification No. 30/3011 C.E. dated 20th April, 2011. Earlier the exemption was provided to all goods other than those bearing a brand name or sold under a trade name falling under Chapters 61, 62 & 63 (except 6305, 63090000 & 6310). Now a corrigendum is issued to provide that such exemption is not available only to "Laminated jute bags falling under 6305"& not on all goods falling under 6305.

➤ **Case Study**

- **Commissioner of Central Excise, Trichy vs. Godrej Sara Lee Ltd. [266 ELT 85] (2011)**

Assessee manufacturer took credit of service tax paid on security services for the job worker's premises. The security service was received by job worker and not by the manufacturer of the final product. As per provisions of Rule 3(1) of the CENVAT Credit Rules, 2004, credit of service tax paid on security services received by manufacturer only can be allowed. Moreover, the department had gone into appeal against the order of non-imposition of penalty which was inadvertently set aside. Therefore the matter was remanded back to adjudicating authority.

- **Commissioner of Central Excise, Ahmadabad vs. Premier Polymers (266 ELT365) (2011)**

The assessee was availing SSI exemption. The department denied such SSI exemption on the basis that the assessee was using brand name of others. The assessee was using its own brand name which was registered in its own name. Even before the trade mark was registered in the name of assessee, brand name could not have belonged to someone else for earlier period. It was held that onus was on the department to prove the actual ownership and that it did not belong to assessee. In absence of evidence by department and in view of assessee's ownership on brand, SSI exemption was allowed.

- **Commissioner of Custom. (I&G), New Delhi vs. Prima Telecom Ltd. (266 ELT386) (2011)**

The assessee paid excess duty on imported spares and parts. Duty was paid on invoice value when goods were cleared which was higher than the contracted purchase price. Foreign supplier apologized for mistake and payment was made as per purchase order. Moreover, corrected invoices were also received from them. The lower authorities after due verification of various documents & submissions rejected refund claim on the basis that the assessment order was not contested by the importer. However,

the excess payment was not contested by these lower authorities. Therefore, this being a clerical error, refund was allowed under section 154 of the Customs Act, 1962.

CORPORATE LAWS



➤ **Companies name availability rules**

The MCA has issued the Companies (Name Availability) Rules, 2011 superseding all previous Circulars and Instructions and has laid down the principles for deciding cases for availability of names. The rules also give an illustrative list of names considered to be undesirable within the meaning of section 20 of the Companies Act, 1956 has also been given in an Appendix. Regarding minimum authorized capital requirement, the following tabulated dispensation is required to be observed

S.No.	Key Words	Required Authorised Capital(INR)
1	Corporation, corp, corpn, corp.	25 crore
2	international, Globe, Global, World, Overseas, Universe, Universal, Continent, Continental, Inter Continental, Asiatic, Asia, Asian being the first word of the name	5 crore
3	If any of the words at (2) above is used within the name (with or without	2 crore

	brackets)	
4	Hindustan, India, Indo, Indian, Bharat, Bharatvarsh, Bhartiya or any other country's name being first word of the name	2 crore
5	If any of the words at (4) above is used within the name (with or without brackets)	25 lakh
6	Industries/ Udyog	5 crore
7	Enterprises, Products, Business, Manufacturing, Venture	50 lakh

The MCA has evolved the guiding principles for deciding on availability of names and a name which falls within the categories mentioned in the rules will not be generally made available. One may refer to the above citation for further details and the format of the annual return.

➤ **Interpretation of the word “Partnership” for CA / CS / ICWA ACT**

The MCA has issued General Circular No. 10/2011 (file No. No. 17/71/2011-CL-V) dated 4th April, 2011 interpreting of the expression “Partnership” for the purpose of Chartered Accountants Act, 1949, Cost and Works Accountants Act, 1959 and Company Secretaries Act, 1980. In all the three Acts, there is a provision for a member to be in practice when he is in partnership with certain others. In the case of Chartered Accountants and Cost & Works Accountants, such persons must be member of the same Institute, while in the case of Company Secretaries; it is provided that the partnership could also be with members of such other recognised professions as may be prescribed.

It is expressed that at the time of enactment of the three Acts governing the professional Institutes, only one form of partnership exist edin India, namely partnerships under Indian Partnership Act, 1932. Subsequently, the Parliament has enacted the **Limited Liability Partnerships (LLP) Act, 2008.**

Though LLPs are bodies corporate under section 3(i) of the LLP Act, though LLPs are basically partnerships may be seen from the definition in section 2(i)(n), i.e., “LLP means a partnership formed and registered under this Act”. Section 2(i)(q) of the LLP Act defines a ‘partner ‘as “any person who becomes a partner in the LLP in accordance with the LLP Agreement”. Hence, LLP is also a partnership and its members are also partners. The MCA has examined this matter and stated that the Acts governing these professional swere passed at a time when LLP did not exist.

It is also clear from the definitions in the LLP Act that such entities are also partnerships and their members are also partners. In the context of section2of the Acts governing the professional Institutes, this interpretation is also not repugnant to the context. Accordingly, the MCA now clarifies that the expression ‘partnership’ wherever occurring in the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 shall mutatis mutandis be construed as including those LLPs where all the other partners are natural persons (i.e., individuals). The expression ‘partner’ shall also be construed accordingly. This clarification shall apply only to these three Acts and not to any other enactment where the expression ‘partnership’ occurs.

➤ **Certification of e-forms under the companies act, 1956 by the practicing professionals**

The MCA has issued General Circular No. 14/2011 dated. 8th April, 2011 in relation to the MCA’s steady progress towards total electronic filing and approval regime with the objective of doing away with human intervention in MCA approvals to the maximum extent possible. The MCA states that for this purpose, it has entrusted practicing professionals registered as members of the professional bodies namely, ICAI, ICSI and ICWAI, with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. Professionals are now to be responsible for submitting/certifying documents (to be signed digitally by them) and system would accept

most of these documents online without approval by Registrar of Companies or other officers of the Ministry.

Hence, to ensure that the data integrity is maintained at all times, there will be checking of such submissions to guard against fraudulent filing. In addition to the penal actions against the companies and their officers in default for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956, action would also be taken on receipt of any complaint, anonymous or otherwise, against such professionals. In case of alleged wrong submissions, a quick enquiry will be conducted by the concerned Regional Director who will be assessing prima facie cases of wrong doing by the professionals and the concerned professionals will be given time for furnishing explanation before conveying to a cancellation. This report will be submitted to e-Governance Cell of MCA which will inform in the concerned professional Institute to initiate an enquiry and complete the same within a month's time. Simultaneously, the concerned professional shall be debarred and shall not be allowed to enter to submit any document on the MCA Portal. This debarment will be for a period of 30 days or till the final enquiry report is received from the respective professional Institute. The MCA will take a final decision after considering the report so received.

➤ **Director's relatives (office or place of profit) amendment rules, 2011:-**

The MCA has issued Notification No. F.No.17/75/2011-C.L.V dated 6th April, 2011 and enhanced the current limit of ` 50,000/- per month contained in Rule 3 of the Director's Relative (Office or Place of Profit) Rules, 2003 to 2,50,000/- per month for payment remuneration to relatives or partners of the directors of the company covered by section 314(1B) of the Companies Act, 1956. Now, companies would be required to obtain prior consent of the company by a special resolution and approval of the Central Government under section 314(1B) of the Companies Act, 1956 read with Director's

Relative (Office or Place of Profit) Amendment Rules, 2011, for appointment of:

- Partner or relative of a director or manager; or
- A firm in which such director or manager, or relative of either is a partner; or
- Private company of which such director or manager or relative of either is a director or a member, to any office or place of profit which carries a monthly remuneration exceeding 2,50,000/- per month. The constitution of the selection committee is also redefined under Rule 7 of the Director's Relative (Office or Place of Profit) Amendment Rules, 2011 for the purpose of appointment of persons mentioned under section 314 (1B) of the Companies Act, 1956 for listed companies, unlisted public companies and private companies. The selection committee is defined to mean:-

- a) For listed public companies- a committee, the majority of which consist of independent directors and an expert in the respective field from outside the company.
- b) For unlisted public companies independent directors are not necessary but outside experts must be there, and
- c) For private limited companies- independent directors and outside experts are not necessary to be there. This implies that henceforth, even private limited companies would be required to form selection committee for appointment of persons covered by section 314 of the Companies Act, 1956.

➤ **Competition law – regulations on combinations and its effective date**

The Competition Commission of India (CCI) has issued Notification No.S.O. 479(E) dated April, 2011 notifying the Competition Commission of India(Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. With this, all combinations covered by the Notification shall be required to seek prior approval

of the CCI in cases of combinations that are covered by the monetary thresholds of assets /turnover of the parties and groups to the combination and which are specified in the notification.

➤ **Sending of balance sheet, etc. by electronic mode**

The MCA has issued General Circular No. 18/2011 dated. 29th April, 2011 under the green initiative in the corporate governance to clarify regarding sending copies of balance sheets and auditor's report, etc., to the members of the company as required under section 219 of the Companies Act, 1956 through electronic mode by allowing paperless compliances by companies after considering sections 2, 4, 5, and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.

After receiving representations from various Industry bodies to dispense with sending physical annual report of a company comprising of balance sheet, profit & loss account, director's report, auditor's report etc. to its members as required under section 219 of the Companies Act, 1956 and in lieu of the same the companies may be permitted to send the aforesaid documents by email to its members. It is hence clarified that a company would be in compliance of sections 219(1) of Companies Act, 1956, in case a copy of balance sheet etc., is sent by electronic mail to its member subject to the fact that company has obtained,

The e-mail address of its member for sending the notice with balance sheet. profit & loss account, auditor's report, director's report, and explanatory statement, etc. through e-mail, after giving an advance opportunity to the member to register his e-mail address and changes therein from time to time with the company or with the concerned depository.

- Company's website display full text of these documents well in advance prior to mandatory period and issue advertisement in prominent newspapers in both vernacular and English stating that the copies of aforesaid documents

are available in the website and for inspection at the registered office of the company during office hours. Website must be designed in a way so that documents can be opened easily and quickly.

- In cases where any member(s) has not registered his e-mail address for receiving the balance sheet, etc through e-mail, the balance sheet etc., will be sent by other modes of services as provided under section 53 of the Companies Act, 1956.

- In case any member(s) insist for physical copies of above documents ,the same should be sent to him physically, by post free of cost.

➤ **Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of Mutual Funds (MFs)and Foreign Institutional Investors (FIIs)Circular No.: A.P. (DIR Series) Circular No. 54 dated April 29th, 2011**

The Reserve Bank of India (RBI) has decided to allow custodian banks to issue IPCs in favour of the Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the Portfolio Investment Scheme. Issue of IPCs should be in accordance with the regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time. Authorised Dealers (AD) are also instructed to comply with the instructions in this matter dated September30, 2010 issued by Department of Banking Operations and Development, RBI.

➤ **Limits of Foreign investments in India by SEBI registered FIIs in other securities Circular No.: A.P. (DIR Series) Circular No. 55 dated April 29th, 2011**

Presently, SEBI registered FIIs are allowed to purchase listed nonconvertible debentures/bonds issued by an Indian company on repatriation basis in accordance with Schedule 5 of the Foreign Exchange Management(Transfer or Issue of Security by a

Person Resident outside India) Regulations, 2000 and limits prescribed by the RBI & the SEBI from time to time. The present limits for such investments is USD 15 billion for FII investment in corporate debt with an additional limit of USD 5 billion for FII investment in bonds with a residual maturity of over five years, issued by Indian companies in the infrastructure sector. RBI has enhanced the above limit prescribed for FII investments in listed non-convertible debentures / bonds with a residual maturity of five years and above, issued by Indian companies in the infrastructure sector by an additional limit of USD 20 billion taking this limit from USD 5 billion to USD 25 billion.

Therefore the total limit available to FIIs for investment in listed non-convertible debentures / bonds would be USD 40 billion with a sub limit of USD 25 billion for investment in listed non-convertible debentures / bonds issued by Indian companies in the infrastructure sector. Such investment by FIIs in listed non-convertible debentures / bonds would have a minimum lock-in period of 3 years. However, FIIs are allowed to trade amongst themselves during the lock-in period. SEBI registered FIIs are also allowed to invest in unlisted non-convertible debentures/ bonds issued by corporate in the infrastructure sector, provided that such investment is as per the aforesaid terms and conditions.

➤ **Limits for obtaining guarantee for advance remittance for import of goods Circular no.: A.P. (DIR series) circular no. 56 dated April 29th, 2011**

With a view to liberalize the procedure, RBI has enhanced the limit for obtaining an unconditional, irrevocable standby Letter of Credit (LC) or a guarantee from an international bank of repute situated outside India or a guarantee of an AD in India, if such a guarantee is issued against the counter guarantee of an international bank of repute situated outside India, for an advance remittance exceeding USD 100,000 or its equivalent. The said limit is now increased with immediate effect to USD 200,000 or

its equivalent for importers (other than a Public Sector Company or a Department/Undertaking of Central/State Governments where the requirement of bank guarantee is to be specifically waived by the Ministry of Finance, Government of India).

➤ **Allotment of director identification number (DIN)**

The MCA has issued General Circular No. 11/2011 date. 8th April, 2011 and has stated that it has already simplified the process for obtaining DIN online, if the DIN-1 e-form has been digitally signed by the practicing Chartered Accountant, Company Secretary or Cost Accountant, verifying the particulars of the applicants given in the application. However, in other cases, where the DIN form is digitally signed by the applicant only, the applications are being disposed of within one or two days after examination by the Central Government. Now, as another step towards simplification in allotment of DIN, the Ministry is considering allotting all DIN applications online. To examine the DIN-4 e-form through the system, it has been decided that the following fields in the DIN-1 e-form will be mandatory:

- Name of Applicant
- Father's name of the Applicant
- Date of Birth
- Income Tax Permanent Account Number (PAN) in case of all Indian Nationals
- Passport in case of all Foreign Nationals.

Currently, the PAN of applicant is not a mandatory field in DIN e-form-1. In order to examine DIN-4 e-form through the system and to avoid duplicate DIN, it has been decided that all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 e-form by 31st May, 2011.

FEMA



- **RBI/2010-11/460 April 5th, 2011 A.P. (DIR series) circular no.48 Acquisition of credit card/debit card transactions in India by overseas banks –payments for airline tickets**

Airline companies incorporated outside India are permitted to repatriate the surplus arising from sale of air tickets through their agents in India after payment of the local expenses and applicable taxes in India. However, where the payment for the tickets are made by the residents using credit/debit card, Card Companies have been providing arrangements to the foreign airlines operating in India to select the country and currency of their choice, in respect of transactions arising from the sale of the air tickets in India in Indian Rupees (INR). In such transactions, the overseas bank as the acquiring bank receives the funds from Card Issuing Company in its Vostro account maintained with an Authorised Dealer bank in India or in its foreign currency account maintained abroad and makes the payment in foreign currency overseas to the foreign airline. This practice adopted by foreign airlines is not in conformity with the extant provisions of the Foreign Exchange Management Act, 1999.

Accordingly, RBI has advised the foreign airlines to discontinue immediately the practice of using overseas banks for settlement of INR transactions on account of sale of air tickets in India.

- **RBI/2010-11/468 & 470 April 6th, 2011, A.P. (DIR series) circular No. 49 & 51 A.P. (FL/RL series) circular No. 11 & 13**

RBI has vide circular A.P. (DIR Series) Circular No.17 {A.P. (FL/RL Series) Circular No. 4} dated November 27th, 2009 advised Authorized Persons (APs) to take into account risks arising from the deficiencies in AML/CFT regime of certain jurisdictions, as identified in the Financial Action Task Force (FATF) Statement issued from time to time. FATF has issued a further Statement on October 22nd, 2010 on the captioned subject calling upon jurisdictions listed in the statement to complete the implementation of their action plan within the time frame and called upon its members to consider the information given in the Statement. The statement divides the strategic AML/CFT deficient jurisdictions are divided into two groups as under:-

- Jurisdictions subject to FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/FT) risks emanating from the jurisdiction: Iran.
- Jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan developed with the FATF to address key deficiencies as of October 2010. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction: Democratic People's Republic of Korea (DPRK).

Accordingly, APs are advised to take into account risks arising from the deficiencies in AML/CFT regime of these countries, while entering into business relationships and transactions with persons (including legal persons and other financial institutions) from or in these countries/ jurisdictions and are advised to consider the information contained in the above statement.

➤ **RBI/2010-11/472 April 7th, 2011 A.P. (DIR series) circular no. 53 Overseas forex trading through electronic / internet trading portals**

RBI has observed that overseas foreign exchange trading has been introduced on a number of internet /electronic trading portals luring the residents with offers of guaranteed high returns based on such forex trading. The advertisements by these internet / online portals exhort people to trade in forex by way of paying the initial investment amount in Indian Rupees. Some companies have reportedly engaged agents who personally contact people to undertake forex trading/investment schemes and entice them with promises of disproportionate / exorbitant returns. Most of the forex trading through these portals are done on a margining basis with huge leverage or on an investment basis, where the returns are based on forex trading. The public is being asked to make the margin payments for such online forex trading transactions through credit cards / deposits in various accounts maintained with banks in India.

It is also observed that accounts are being opened in the name of individuals or proprietary concerns at different bank branches for collecting the margin money, investment money, etc.

Accordingly, RBI had clarified vide Press Release 2010-2011/1196 dated February 21st, 2011 that remittance in any form towards overseas foreign exchange trading through electronic/internet trading portals is not permitted under the Foreign Exchange Management Act, 1999 (FEMA). It is has also clarified that the existing regulations under FEMA do not permit residents to trade in foreign exchange in domestic / overseas markets. Residents are, however, permitted to trade in currency futures and options contracts, traded on the stock exchanges recognised by the Securities and Exchange Board of India in India, subject to the conditions specified by the Reserve Bank from time to time.

RBI has, now, advised Authorised Dealers (ADs) to exercise due caution and be extra vigilant in respect of the above transactions. It is clarified that any

person resident in India collecting and effecting / remitting such payments directly / indirectly outside India would make himself/ herself liable to be proceeded against with for contravention of FEMA besides being liable for violation of regulations relating to KYC norms / AML standards.

POLICY WATCH



➤ **Seven projects under PPP cleared by Finance Ministry**

Seven projects which include widening of roads in five states were approved by a panel in the Finance Ministry at an estimated cost of US\$ 1.69 billion and will be built under Public-Private-Partnership (PPP) mode. The Public Private Partnership Appraisal Committee (PPPAC) granted the approvals. Five projects are associated with the Ministry of Road Transport and Highways and two with the Ministry of Home Affairs. The PPPAC has approved the four-laning of Jabalpur-Katni-Rewa Section of NH 7 in Madhya Pradesh at an estimated cost of US\$ 427.18 million and six-laning of Icchapuram-Srikakulam-Anandpuram section of NH 5 in Andhra Pradesh that would cost US\$ 395.96 million. The other projects approved were, four-laning of Obedullaganj-Budhni Betul section of NH 69 in Madhya Pradesh, four-laning of Orissa border to Aurang section of NH 6 in Chhattisgarh and four-laning of Meerut to Bulandshahar section of NH235 in Uttar Pradesh. The PPPAC was established in January 2006 and till now it has approved 219 projects with an estimated cost of US\$ 47.98 billion.

➤ **Government tells states to upgrade statistical divisions**

The Centre has asked states for specific plans to help strengthen the statistical system, for which \$107 million has been sanctioned in collaboration with the World Bank, as the authenticity of various statistical data has drawn flak. The National Statistical Commission had recommended the elevation of statistical divisions in states. The ministry is undertaking the centrally sponsored scheme, India Statistical Strengthening Project in collaboration with the World Bank to strengthen the statistical system of state/Union Territories governments for collecting, compiling and disseminating reliable statistics for planning and policy making. This will empowering discharging the role of a nodal agency, effectively laying the grounds for developing a sound statistical system, that will improve the growing requirements of planners and policy makers for informed decision making.

➤ **Government aims to add 17,000 mw renewable power by 2017**

The government aims to add 17,000 megawatts of renewable energy over five years starting 2012, stepping up the country's focus to develop clean energy sources. India's greenhouse gas emissions grew more than half between 1994 and 2007, helped up by a largely coal-reliant power sector that nearly doubled its share in emissions, making the country one of the top five carbon polluters of the world. The country is one of the world's top producers of wind energy, and generates solar energy as well as power from biomass and biogas, such as capturing methane from animal waste. India will need an investment of Rs 150 billion to add the extra capacity in the 12th Five-Year Plan. The country has currently 20 Giga watt of renewable power generation capacity, constituting 11% of installed capacity.

➤ **Himachal clears 8 industrial projects worth Rs. 12.44 billion**

The Himachal Pradesh government granted clearance to eight additional new industrial proposals, besides one expansion proposal. All these entail a total investment of Rs 12.44 billion, including an Rs 6.30 billion plant by Micromax Energy Ltd. The proposals are that of M/S Micromax Energy Limited, carrying an investment of Rs 6.30 billion and will manufacture solar energy cells; M/S Cipla Limited, with an Rs 2.70 billion investment to manufacture pharmaceutical and herbal medicines; M/S Shivalik Bimetal Controls to invest over Rs 200 million & will make bonded clad strips while M/S Sun Juice will invest over Rs 510 million and will set up juice and milk processing and packaging units. All these units are expected to generate 1,860 jobs.

➤ **National Solar Mission gathers momentum with new projects**

The National Solar Mission is gathering momentum as more number of projects move towards financial closure and achieving land acquisition. The appraised projects include smaller projects of 1 mw and 2 mw, 5 mw solar photovoltaic projects and large scale solar thermal projects. While 80% of the project developers under the rooftop and small solar generation programme have finalized the technology, majority of them have confirmed land acquisitions. According to the reports, 24 project developers confirmed financial closure. The government of India had allotted 66 mw capacity under the migration scheme in September 2010 and another 620 mw through competitive bidding route in January 2011 making an overall allocation of 686 mw so far.

➤ **Uttarakhand government approval to four co-generation projects**

An empowered committee of the Uttarakhand government gave its approval to four co-generation projects in Uttarakhand. These projects would produce 41.25 megawatt (Mw) of power. The approval assures central subsidy for all the four companies Luxmi Sugar Mill, Uttam Sugar Mill, Siddheshwari Paper Mill and Bharat Electronics Limited (BEL). The committee also approved Luxmi

Sugar Mill and Uttam Sugar Mill's decision to sign a power purchase agreement with government-run Uttarakhand Power Corporation Limited for selling additional power. The empowered committee asked the Uttarakhand Renewable Development Agency (UREDA) to send a proposal to the ministry of new and renewable energy for securing subsidies for the four companies involved in the co-generation projects.

➤ **Tamil Nadu PCPIR receives Rs 51.20 billion government support**

The newly approved Petroleum, Chemicals and Petrochemicals Investment Region (PCPIR) for Tamil Nadu, set up at Cuddalore and Nagapattinam, has received government support of Rs 51.20 billion. This will be part of investments in external infrastructure of Rs 138 billion, and over and above an estimated investment of Rs 997.50 billion. The ministry is already proposing additional government grants for the project to fasten the projects, of course with riders. PCPIR is the flagship scheme of the Ministry of Chemicals and Fertilizers which has approved investments worth Rs 1545.12 billion in three regions Gujarat, Andhra Pradesh and West Bengal.

➤ **New telecom policy may divide mobile permits into Network Service Provider & End User Service Provider**

The new telecom policy, which is slated to be in place by the year-end, may divide mobile permits into two categories, Network Service Provider (NSP) & End User Service Provider (ESP). NSP will be held by companies that provide all infrastructures for communication and broadcasting services while companies with ESP can provide voice, data and broadcast services to the consumer. It may also do away with the existing rules on infrastructure sharing so that telecom companies can share hardware, software and even spectrum. These are the recommendations of internal committees that have been set up to work out the modalities of National Telecom Policy, 2011 earlier this year on January 1st, 2011.

**INDUSTRY WATCH &
CORPORATE HIGHLIGHT**



➤ **Indian Biotechnology industry to reach \$10 billion mark by 2015**

The Indian biotechnology sector is expected to touch the \$10 billion mark by 2015 on the back of emerging opportunities across various verticals, namely biopharma, agri-biotechnology, industrial biotechnology among others. Presently, the biotechnology sector in the country is estimated to be around \$4 billion of which around 40% is contributed by Karnataka. Bangalore hosts 52% of the core biotechnology companies in the country and around five top biotech companies are in the city. It shows the favorable ecosystem for biotechnology industry in the state. Global biotechnology industry, which is now estimated to be around \$140 billion, is slowly looking towards emerging economies like India, Brazil, and China among others to drive further growth in the industry. Biotechnology industry should take a holistic approach of this applied science to solve issues of health problems, productivity in agriculture and industrial usage.

➤ **Core sector grows 7.6% in March, up 5.9% in FY2011**

The output of the six infrastructure industries expanded at its fastest rate in five months to March while manufacturing showed signs of pick up in

April, together indicating a possible rebound in industrial production. Manufacturing has picked up pace in April. The central bank needs to lift rates to check the rate of price rise that surprisingly accelerated to 9%, but low single digit industrial growth had made sharp rate increase difficult. The six infrastructure industries - crude oil, petroleum refinery products, coal, electricity, cement and finished steel - have a 26.7% weight in the index for industrial production. In the fiscal 2010-11, the output of the six infrastructure industries was up 5.9%, against 5.5% in the previous year.

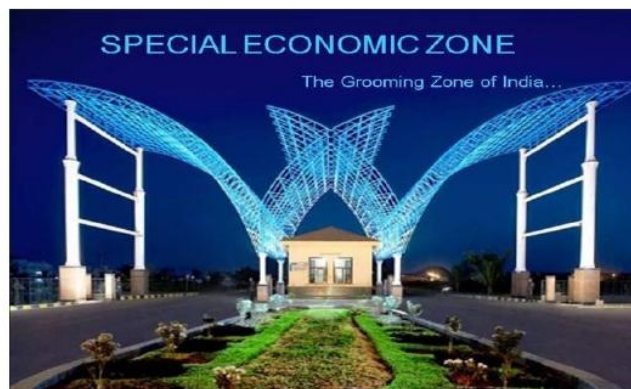
➤ **India-US trade may reach \$100 billion in three years**

Trade between India and the US is expected to grow to \$100 billion within two to three years while Indian companies are strengthening their presence in the US across various sectors. The trade between both the sides to reach around \$100 billion within two-three years' time. Apart from trade, the other rising sector in the bilateral business is that of Indian investments going to the US, which could be around \$8 billion to \$10 billion in the next five years. This is a new trend altogether because earlier Indian corporate used to buy established companies and now they are going for Greenfield projects.

➤ **France wants greater investment in Indian infrastructure**

India - France cooperation in infrastructure and energy development is bound to increase, as the two sides forge greater partnerships and pledge more investments. There is tremendous interest in France in the Indian infrastructure sector and its development. Investment in key sectors like infrastructure development and nuclear energy is bound to increase. Currently French investment in the infrastructure sector in India is around 10 million Euros, which is continuing from 2008 to 2012. This figure is expected to go up exponentially in the coming time.

➤ **Exports from SEZs up 43% in 2010-11**



The country's exports from its Special Economic Zones (SEZs) registered a robust 43% growth in the fiscal 2010-11 at Rs 3,158.67 billion, against Rs 2,207.11 billion in the previous year, even as the overall export growth was 32.3% in rupee terms. On May 11, 2011, 378 notified SEZs were functioning across the country out of the 582 approved SEZs so far. There was a huge rush to set up SEZs across the country after the concept got concretized once the SEZ Act came into being in February 2006. At the end of March 31, 2011 as many as 133 SEZs are operational, out of which 17 are multi-product SEZs and the remaining include mostly IT/ITeS SEZs, engineering, electronic hardware, textiles, biotechnology, gem and jewellery and other sector specific SEZs.

➤ **Navi Mumbai SEZ to be split into 5 zones set to get approval**

The Navi Mumbai Special Economic Zone (SEZ), promoted by Reliance Industries may finally win government approval with the promoters deciding to split the multi-product zone into five parts. The project has been grounded for close to four years as the promoters were not able to meet the government requirement of contiguity within the composite zone. The government was concerned that lack of contiguity might lead to revenue leakages as products meant for exports could be smuggled to the local market. SEZs are special enclaves enjoying significant tax concessions on exports. The board of approval, the central body for clearing SEZs, is expected to take up the revised proposal of Navi

Mumbai SEZ on May 31. The board will have to see if the new proposal meets the minimum criteria for setting up the zones.

➤ **India, US start \$50 million fund for clean technology**

The United States and India announced a joint \$50 million fund to promote research in clean energy technologies, a step seen as part of efforts to whittle down their differences over how to fight climate change. The fund will help establish the Indo-U.S. Joint Clean Energy Research and Development Centre which will finance academia, institutions and industry from both countries to undertake the research. This is the first collaborative research effort of its kind, where Indian and U.S. researchers will be jointly selected. It elevates the U.S.-India clean energy cooperation to a new level & acts as a pillar in continued strategic partnership.

➤ **RIL invest \$12 billion in chemicals business to tap growing market for healthcare products**



Reliance Industries (RIL) has an ambitious plan to be a world leader in rubber, and is investing up to \$12 billion in the chemicals business to tap the rapidly-growing market for hygiene and healthcare products. Reliance has the advantage of massive plants such as the world's biggest refining complex at Jamnagar that can supply feedstock used in the chemical industry. In the rubber market, Reliance sees huge opportunities in India and the rest of Asia. RIL is developing a whole new rubber business. RIL is one of the world's largest players in rubber as the whole

tyre industry moves to Asia. The big trend in the next 10 years for all the automobile growth related projections would be focused around China, India and Asia.

➤ **ING Life ties up with Visakhapatnam cooperation bank**



ING Life India, part of the ING Group, has tied up with Visakhapatnam District Central Cooperative Bank. The cooperative bank will refer its customers to ING Life India for life insurance products and services. ING Life has a strong network of tie-ups with co-operative banks across India. They have developed their network in Andhra Pradesh, and this tie-up gives the right start in the region to reach out to customers to help them manage their financial future. This is the fifth district central cooperative bank that the company has tied up with in Andhra Pradesh. The tie-up gives access to ING Life India to make its products available to more than 60,000 customers of the cooperative bank through its 28 branches spread across Visakhapatnam, Anakapalli, Narsipatnam and Yelamanchilli

➤ **Adani Power to double capacity to 3,960 mw by FY12 – end**



Adani Power aims to double its generation capacity to 3,960 MW in the current fiscal and sell at least three-quarters of the electricity through long-term agreements to insulate itself from volatility in merchant power rates. The Ahmadabad-based utility is implementing 16,500 MW of power generation projects across different locations in India. This includes 4,620 MW projects at Mundra in Gujarat and a 3,300 MW project at Tiroda in Maharashtra. The company has achieved financial closure for projects aggregating to 13,200 MW so far and hopes to tie up funds for the balance 3,300 MW units, which are coming up at Bhadreshwar in Gujarat by June 2012.

➤ **Alta-Xintong offers DC solar power for telecom towers**



Alta-Xintong Solar Tech Pvt Ltd, a Joint Venture (JV) between Bangalore-based Alta Energy Technologies Pvt Ltd and Chinese solar system solution provider XinTong, has launched DC solar power systems for power telecom towers in India. The company has tied up with an international financial institution to finance deployment of solar power systems. The system would support the operators to run their new towers through solar power, reducing dependency on diesel powered systems which are currently under use. The company is expecting to sell around 2,000 solar power systems by end of 2011.

➤ **TCS launches SMB solution ION in West Bengal**



Tata Consultancy Services (TCS) is expecting a four-fold increase in the number of users for its ION services from 225 to over 1,000 by the end of this financial year. "ION" is an Integrated Information Technology solution catering to small and medium enterprises (SMEs). ION addresses requirements of SMEs in five verticals - retail, education, wellness, manufacturing and professional services and works on a pay per user model. The services were launched in West Bengal. TCS expect around 25% of the subscribers to come from the Eastern part of the country. ION with its integrated approach of providing both hardware and software solutions is a first of its kind in the country.

➤ **CryolorSA sets up Rs 450 million unit**



Cryolor Asia Pacific, a 100% subsidiary of France-based Cryolor SA, sets up its manufacturing facility. The facility at Melmaruvathur and involved an investment of around Rs 450 million.

Statutory Compliance Calendar for the month of May 2011			
Due date	Statutory compliance under Act	Particulars	Governing Authority
			
06/05/2011	Service Tax	Payment of monthly service tax for the month of April by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of April on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/05/2011	Income Tax	Deposit of Income Tax TCS and TDS deducted in April	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.
10/05/2011	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-ALM1	Reserve Bank of India.

11/05/2011	ESIC	Filing half yearly ESIC return	The employees' state insurance Act-1948. Ministry of labour and employment.
15/05/2011	Income Tax	(a) Income Tax TDS/TCS statement in form 24Q/26Q/27EQ (Other than Government) for the quarter January to March. (b) Return in form 27Q in respect of TDS from interest, dividend or any other sum payable to non-residents for the quarter January to March. (c) Monthly return of Provident Fund in form 10 of employees leaving the service during April.	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of April. (b) Monthly return in form 5 for employees joining Provident Fund during April 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 April.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/05/2011	ESIC	Payment of ESIC contribution for the month of April	The employees' state insurance Act-1948. Ministry of labour and employment.
25/05/2011	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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- Growth Planning
- Succession Planning.
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- Risk, Uncertainty and Change Management Services
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- Wealth Management Services.

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- Implementing and Operating in the tax consolidation regime
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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.

CORPORATE OFFICE

P-6/90, Connaught Place, Connaught Circus,
New Delhi-110001, India.

Phone No: -011-23343333.

DELHI BRANCH

204, Prakash Chamber, 6 Netaji Subhash
Marg, Main Road Daryaganj, New Delhi-
110002, India.

Phone No: - +91-9871857333; 011-43520194.

UTTAR PRADESH BRANCH

B-2, Shanchar Vihar, ITI Mankapur, District
Ghonda, Uttar Pradesh, 271308241, India.

NEPAL BRANCH

Building No:-65, Ward No:- 10, Lakhe
Chaur Marg , Kathmandu Metropolitan
Kathmandu, Nepal.

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