

# Tax & Corporate law Bulletin

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**December 2012**

**From the Editor's Desk...**

**Dear Reader,**

**Greetings for the season.**

May the miracle of Christmas bring you love, Christmas is the merry time, the time to bright up your tree, and lovely things to see, May the New Year bless you with joy & Happiness, we wish you laughter, peace and hope.

Updates for the month of December: Import of Service-valuation, Amendments to SEBI (Mutual Funds) Regulations, Amendment to companies (accounting standards) rules, 2006 and read many more...

We eagerly await your feedback on the bulletin.

**Yours truly,**

**Rajput Jain & Associates**

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“Adapting swiftly to the  
global business environment”





## DIRECT TAX

### ➤ **Mounting pendency of appeals before CIT (A) & tardy disposal by CIT (A) – performance appraisal of CIT (A)**

The CBDT seriously concern about the mounting pendency of appeals before CIT (A) and huge amounts disputed therein. The CBDT made the analysis of disposal of appeals by CIT for F.Y. 2011-12. It was seen that the average disposal of CIT (A) was 312. About 99 CIT (A) could not reach the average disposal of 312. 64 CIT (A) disposed of appeals in the range of 300-400 and an equal number of CIT (A) disposed of appeals in the range of 400-500. 14 CIT (A) disposed of more than 500 appeals and 3 of than disposed of more than 600 appeals in the year.

The CBDT, taking note of the situation decided that CIT may hold quarterly, reviews in October 2012, January 2013 and April 2013 to review the work of CIT (A) functioning under them and bring the fact of shortfall in the disposals, lack of quality in the orders etc., to the notice of the officer(s) concerned with a copy to the Zonal Member. It has been further decided that the CIT while recording the APAR should consider, inter alia, the disposal of appeals from the perspective of the all India average number of appeals disposed of. It is to be noted that while doing so the CIT shall give due weightage to High Court Demand Appeals and the appeals related to transfer pricing in the ratios of 2:1 and 4:1 in comparison to other appeals.

In case of CIT (A) who has been transferred to other charges during the recent AGT, the disposal by them vis-a-vis the targets fixed for them for the period they worked in that charge, may be communicated to the new Reporting Officer for incorporation in the APAR.

### ➤ **Functional control of Special Valuation Branches - Registration**

**CBEC Circular No. 29 /2012-Customs dated 7<sup>th</sup> of December, 2012.**

The functioning of SVBs was reviewed by the Board with a view to strengthen their working. It has been decided to vest the Directorate General of Valuation (DGOV) with functional control over the SVBs. Consequently, the presently existing SVB sections with their existing staff will henceforth function under the supervisory control of the DGOV

Further the officers posted in SVBs shall not be given any additional responsibilities and they shall exclusively handle work relating to SVB investigations and related issues.

## RECENT JUDGEMENT

### ➤ **Section 54F–Year of taxability of the amount withdrawn from CGAS:-**

When amounts deposited under Capital Gains Account Scheme (CGAS) were not utilized wholly or partly for the purchase or construction within the period specified, then such amount would be charged as income of the previous year in which the period of three years expires (starting from the date of the transfer of the asset). Section 54F does not say that the amount shall be taxed in the year of withdrawal, if such withdrawals are not utilized for the purpose of construction. Even if the amount deposited in a Capital Gain Account, is utilized for any other purpose, assessee will have to pay tax for such amount in the previous year after expiry of the three years' time period.

*JCIT vs. B. Shiv Kumar [2012]*

### ➤ **Section 5(2), 9(1) (i), 40(a) (i) & 195: Exempt Commission & TDS liability:-**

When a non-resident agent operates outside the country no part of his income arises in India, and since payment is remitted directly abroad, and merely because an entry in the books of account is made, it does not mean that the non-resident has received any payment in India; tax was not deductible at source and disallowance under section 40(a)(I) was not called for.

*CIT vs. Eon Technology (P) Ltd (2012) 246 CTR (Del) 40. 8<sup>th</sup> November, 2011*



➤ **Section 32: Set off of long term capital with brought forward losses**



While of set off of business loss vis-à-vis depreciation, the first preference shall be given to the business loss. The brought forward unabsorbed depreciation is treated as current years depreciation because of the legal fiction, therefore the treatment given to the current year's depreciation is equally applicable to brought forward depreciation after the application of Finance Act, 2001. Current year's depreciation is to be allowed as set off from the Long Term Capital Gains and brought forward depreciation is to be treated as current year's depreciation as per the legal fiction of section 32(2), the same is also to be allowed to be set off from the Long Term Capital Gains.

*Suresh Industries (P.) Ltd. vs. ACIT [2012] 27 taxmann.com 203 (Mumbai - Trib.).*

➤ **Section 139-Date of filing of the return of income**

The date of transmitting the return electronically shall be the date of furnishing of return if the Form ITR-V is furnished in the prescribed manner and within the period specified. Once assessee files ITR-V within specified or extended time, for all practical purpose, the date of filing of the return shall relate back to the date on which the return was electronically uploaded not with the date of receipt of Form ITR-V.

*E.K.K. & Co. vs. ACIT [2012] 27 taxmann.com 111 (Cochin - Trib.).*

➤ **Section 11: Charitable or religious trust- Exemption of income from property held- Application of income should be in India.**

Requirement of section 11(1)(a) is that income of trust should be applied for charitable purposes, and it should be applied in India. Amounts spent by assessee-trust outside India for participating in a fair held in Germany could not be treated as application of income of trust for purpose of section 11(1)(a) and were rightly disallowed (A.Y 2007-08). *India Brand Equity Foundation v. ACIT (2012) 53 SOT 506 (Delhi) (Trib.)*

➤ **Section 9(1) (vii): Income deemed to accrue or arise in India –Royalty.**

Assessee-Government undertaking was engaged in transporting coal from one port to another port. For said purpose, assessee was using its own vessels as well as hiring vessels from foreign companies .Payment made by assessee as hire charges was royalty and hence, on facts, provisions of section 9(1)(vi) were attracted (A.Y.2002-03 to 2004-5, 2006-07)]

*Poompuhar Shipping Corpn. Ltd. v. ADIT (International Taxation) (2012) 53 SOT 451(Chennai) (Trib.)*

➤ **Section 32: Rate of depreciation-Not required to file revised return.**

Assessee showed addition to machinery as an addition to 'Plant and machinery' in its books. However, in Form 3CD, it showed same addition as addition to 'Building'. Assessing Officer allowed depreciation at rate of 10 per cent .The Tribunal held that to claim higher rate of depreciation, i.e., of 25 per cent, claim could be modified in original return and revised return need not be filed.

*Bio Chemicals Ltd. v DCIT (2012) 53 SOT 195(URO) (Delhi) (Trib.)* **SERVICE TAX**

➤ **Courier Services**





The appellant through its network of branches provided money transfer services. If the remitter at one branch deposited cash to be given to an intended recipient outside the city, the branch would instruct its closest branch at the recipients end to dispense cash to the recipient from its corpus. In such a scenario there is no actual transportation of cash from the branch by another, and hence such services would not be liable for service tax under the category of "courier services"

*[C.C.C. vs. Patel Vishnubhai Kantilal & Co. (2012) 28 STR 113 (Guj.)].*

➤ **Storage and Warehousing service**

The Apex Court in case of R.D. Saxena vs. Balram Prasad Sharma AIR 2000 SC 912 held that the 'case files' of banks retained by an advocate would not be considered as 'goods' as they are not 'saleable' and do not have any marketability. The Tribunal relying on the aforesaid judgment held that the service of storage of old records and files provided by the assessee to various banks and corporate houses would not be considered as storage and warehousing of 'goods' and hence not liable for service tax under the category of 'storage and warehousing service'.

*[CST vs. P.N. Writer & Co. Ltd. (2012) 28 STR 264 (Tri.-Mumbai)].*

➤ **Import of Service-valuation**

Where the price to be paid to the foreign service provider was stated in the contract to be 'net of Income-Tax' the value of taxable service was held to include the Income-Tax

*[T.V.S. Motor Co. Ltd. vs. CCE, Chennai – III (2012) 28 STR 150 (Tri. – Chennai)].*

**CENTRAL EXCISE**

• **Tariff notification**

Exemption to Equipment and Stores used for Defence Project ASTRA: Exemption is granted to Equipment and stores used for the systems and sub-systems of Project ASTRA of the Government of India in the Ministry of Defence subject to the following condition: Before clearance of the said

goods, a certificate from the Project Director, ASTRA, Defence Research and Development Laboratory, Hyderabad, in the Ministry of Defence to the effect that the goods are intended for the aforesaid use is produced to the proper officer The said Notification is valid till March 1<sup>st</sup>, 2013.

**(Notification No. 39/2012- Central Excise dated 19<sup>th</sup> November, 2012).**

• **Non Tariff notification**

Jurisdiction of Commissioners of Central Excise Modified Notification No. 14/2002 CE (NT) dated March 8<sup>th</sup>, 2002 dealing with jurisdiction of Chief Commissioners, Commissioners, etc., has been amended to modify jurisdiction of following Commissioners of Central Excise:

- Bengaluru I
- Bengaluru II
- Bengaluru III
- Belgaum

**(Notification No. 30/2012 CE (NT) dated 20<sup>th</sup> November, 2012)**

**INDIRECT TAX**

**SERVICE TAX**

• **Synopsis of Notifications, Circulars & Letters**

**CBEC vide Circular No. 165/16/2012-ST dated 20<sup>th</sup> November, 2012** has restored the service specific accounting codes for the purposes of obtaining registration & payment of service tax. A specific sub-head has been created for payment of "penalty" under various descriptions of services. It is clarified that the sub-head "other receipts" is meant only for payment of "interest" on delayed payment of service tax. CBEC further clarified that registrations obtained under the positive list approach continue to be valid. New taxpayers can obtain registrations by selecting the relevant description/s from among the list of 120 descriptions of services given in the Annexure to the said Circular.

Where registrations have been obtained under the description "All Taxable Services", the taxpayer



should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure. If any applications for description "all taxable services", such amendment may not be necessary and the officers in the field formations may provide necessary guidance to the taxpayers in this regard.

*CBEC vide Notification No. 48/2012-ST dated November 30<sup>th</sup>, 2012* has accordingly amended Form ST-1 to provide for description of various taxable services & accounting codes for payment of service tax.

## **FEMA**

### **➤ External Commercial Borrowings (ECB) Policy**

**A.P. (DIR Series) Circular No. 48 dated 6<sup>th</sup> November, 2012**

**ECB by Small Industries Development Bank of India (SIDBI):-**

SIDBI has been included as an eligible borrower for availing of ECB for on-lending to Micro, Small and Medium Enterprises (MSME) sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, subject to the following terms and conditions:-

- Such on-lending by SIDBI shall be to the borrower's directly either in INR or in foreign currency;
- The foreign currency risk shall be hedged by SIDBI in full in case of on-lending to MSME sector in INR; and
- On-lending in foreign currency shall be subject to Regulation 5(5) of FEMA *Notification No. 3/2000-RB dated 3/5/2000*, as amended from time to time and shall only be to those beneficiaries which have natural hedge by way of foreign exchange earnings.
- Availment of ECBs, including the outstanding ECBs, up to 50% of their owned funds, for on-lending to MSME sector, shall be under the automatic route and beyond 50% of owned funds,

shall be under the approval route, subject to a ceiling of USD 500 million per financial year;

- The proceeds of ECB availed by SIDBI, shall be used for on-lending to MSME sector only for the permissible end-uses as provided under the existing ECB policy.

➤ **Press Release dated November 9<sup>th</sup>, 2012 issued by Ministry of Finance, Government of India:-**

**A.P. (DIR Series) Circular No. 54 dated 26/11/2012. Relaxation in ECB Policy for the upcoming 2G spectrum auction**

As per the extant policy, eligible borrowers in the telecommunication sector are permitted to avail of ECB for the purpose of payment for spectrum allocation, under the automatic route. Successful bidders of 3G auction were also permitted to make the payment for spectrum allocation initially out of Rupee resources to be refinanced with a long-term ECB under the approval route subject to certain conditions. To give effect to the decision of the Government and keeping in view the large outlay of funds required to be paid directly to the Government within a limited period of time, the RBI has reviewed the ECB Policy and accordingly the following relaxations are provided in ECB Policy for the upcoming 2G spectrum auction:

- **Refinancing of Rupee resources:** The successful bidders making the upfront payment for the award of 2G spectrum initially out of Rupee loans availed of from the domestic lenders would be eligible to refinance such Rupee loans with a long-term ECB, under the 'automatic route' subject to certain conditions.
- **Bridge Finance facility:** Successful bidders can also avail of short term foreign currency loan in the nature of bridge finance under the 'automatic route' for the purpose of making upfront payment towards 2G spectrum allocation and replace the same with a long term ECB under the 'automatic route' subject to certain terms and conditions.



- Relaxation in ECB-liability ratio and percentage of shareholding: The successful bidders in the 2G auction will be allowed to avail of ECB under the 'automatic route' from their ultimate parent company without any maximum ECB liability-equity ratio subject to the condition that the lender holds minimum paid-up equity of 25% in the borrower company, either directly or indirectly.

➤ **Money Transfer Service Scheme (MTSS):-**

**A.P. (DIR Series) Circular No. 49 dated 7<sup>th</sup> November, 2012**



As per extant instructions, Authorised Persons (APs), who are Indian Agents under the MTSS, are required to submit list of their Sub Agents to the Foreign Exchange Department (FED), Central Office (CO) of the Reserve Bank (RBI) on a half yearly basis. On a review, RBI has decided to discontinue submission of the said half yearly statement to FED, CO.

The list of Sub Agents has already been placed on the RBI website. Authorised Persons (Indian Agents) should inform any addition/ deletion to the list (names and addresses of Sub Agents) immediately, as and when they appoint/ remove any Sub Agent under the scheme, to

- The concerned Regional Offices (ROs) of the FED of the RBI, under whose jurisdiction their registered offices fall and
- The Forex Markets Division, FED, CO, RBI. Authorised Persons (Indian Agents) should visit the RBI website and verify the list of Sub Agents on regular intervals and any

aberration to the list observed may immediately be brought to the notice of the concerned FED ROs and FED CO.

Further, Authorised Persons (Indian Agents) should confirm the veracity of the list placed on RBI website to FED CO either in form of a letter or by e mail at within 15 days of the end of a quarter.

- **Notification No. FEMA 229/2012-RB dated April 23<sup>rd</sup>, 2012 – The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012–Amendment in Regulation 9, Schedules 1 & 4:-**



Notification No. FEMA 20/ 2000 – RB is amended to give effect to the following amendments brought in by the Consolidated FDI Policy - Circular No.1 of 2011 effective from April 1, 2011 unless stated otherwise:

- Amendment relating to removal of the condition of prior Government approval in case of existing joint ventures/ technical collaborations in the 'same field'.
- Allowing issue of shares against import of capital goods by units in SEZs permitted by A. P. (DIR Series) Circular No. 91 dated April 1, 2003.

Provision relating to issue of shares by a company requiring the Government approval have been amended to provide for issue of shares against shares swap, issue shares against import of capital goods/ machinery/equipment (including second-hand machinery) and issue shares against pre-operative/pre-incorporation expenses (including payments of rent etc.).



- Paragraph (a) of Annex (a) of Schedule has been deleted and Paragraph B has been revised.

These amendments shall come into force from the date of the Consolidated FDI Policy Circular No. 1 of 2011 i.e., March 31, 2011, issued by the Department of Industrial Policy and Promotion, Government of India.

## **CORPORATE LAWS**

### ➤ **Arbitration Mechanism in Stock Exchanges:-**

The SEBI has issued Circular No. CIR/MRD/ICC/29/2012 dated 7<sup>th</sup> November, 2012 in relation to amount to be deposited by the investors at the time of making arbitration reference and based on inputs received, it is now decided that a client, who has claim/counter claim up to 10 lakh and files arbitration reference, shall be exempt from the deposit. Expenses thus arising with regard to such applications shall be borne by the Stock Exchanges. SEBI has also stated that the SEBI inspection of stock exchange shall cover implementation of this circular. One may refer to the above citation for further details.

### ➤ **Debt Allocation Mechanism for FII:-**

The SEBI has issued Circular No. CIR/IMD/FIIC/22/2012 dated 7<sup>th</sup> November, 2012 stating that earlier it had provided the facility of re-investment of up to two years from the date of the circular, or to the extent of twice the size of the debt portfolio, to those FIIs and sub-accounts that had already acquired limits and/or invested in debt in the manner prescribed in the said circular. With a view to provide operational flexibility, beginning January 1, 2014, it has been decided that the FIIs/sub-accounts can re-invest during each calendar year to the extent of 50% of their debt holdings at the end of the previous calendar year. SEBI has now decided that the time period for utilization of the Government debt limits (for both old and long term limits) allocated through bidding process shall be 30 days while the time period for utilization of the corporate debt limits (for both old and long term infra limits) allocated

through bidding process shall be 60 days. SEBI has also decided that FII/sub-accounts may avail limits in the Corporate Debt Long Term Infra category without obtaining SEBI approval till the overall FII investments reaches 90% (ninety percent), after which the auction mechanism shall be initiated for allocation of remaining limits. SEBI will put in place a mechanism to monitor the utilization of the limit. One may refer to the above citation for further details.

### ➤ **Examination of balance sheets by ROCs:-**

The MCA has issued General informative Circular No. 37/2012 dated 6<sup>th</sup> November, 2012 stating that every company registered under the provisions of the Companies Act, 1956 is required to file its balance sheet annually with the office of the Registrar of Companies (ROC) within whose jurisdiction the registered office of the company is located. Presently, there are more than 8 lakh companies registered with various offices of the ROCs located all over the country. Balance sheets of all the companies who carry out the filing are available for public inspection on the portal of this Ministry.

The underlying idea behind the filing of balance sheets and other documents which require similar filings is to publicly disclose information which reflects various aspects of the working of a company so that the company's public accountability is maintained. It is neither intended nor feasible for the ROCs to scrutinize or verify the contents of filing except on a random basis. Companies and its Directors and officials are liable to be penalized for any incorrect, false or misleading information that such filing disclose. In the following cases, however, the Registrars routinely scrutinize balance sheets:

- Of companies against whom there are complaints;
- Of companies which have raised money from the public through public issue of shares/debentures etc.;
- In cases where the auditors have qualified their reports;



- Default in payment of matured deposits and debentures; and
- References received from other regulatory authorities pointing out violations / irregularities calling for action under the Companies Act, 1956.

After the scrutiny, suitable steps are initiated wherever necessary to obtain explanation and clarification and to institute inspections, investigations and prosecutions wherever warranted. One may refer to the above citation for further details.

➤ **Appointment of cost auditor by companies:-**



The MCA has issued General Circular No. 36/2012 on 6<sup>th</sup> November, 2012 in relation to the above and directing that a company shall, within thirty days from the date of approval by MCA of the application made to the Central Government in the prescribed Form 23C seeking its prior approval for the appointment of cost auditor, issue formal letter of appointment to the cost auditor, as approved by the Board. The cost auditor shall, within thirty days of the date of formal letter of Appointment issued by the company, inform the Central Government in the prescribed form 23D, along with a copy of such appointment. In case of change of cost auditor caused by the death of existing cost auditor, companies are allowed to file fresh e-form 23C, without any additional fee, within 90 days of the date of death.

The additional fee payable as per the Companies (Fees on Applications) Rules, 1999 [as amended] shall become applicable after expiry of the said 90

days. Accordingly, e-forms 23C and 23D are being modified to capture such details. In case of change of cost auditor for reasons other than death of the existing cost auditor, companies are required to file fresh e-form 23C with applicable fee & additional fee, clearly specifying the reasons of change. In case of change due to resignation of the existing cost auditor, e-form 23C should be accompanied by the resignation letter of the existing cost auditor. In case of change due to the management policy of periodical rotation, then attach a copy of the Board approved rotational policy with the e-form 23C. In any other case, the change should be duly justified and supported with the relevant documents.

In order to ensure compliance of section 224(1-B) of the Companies Act 1956, required changes are being made in the MCA21 system to restrict the number of cost audit approvals to the limits specified in section 224(1-B) through a counter on the membership number of the sole proprietor or partner of the firm. It will be further ensured that in case of a sole proprietor, he has completed the audit and submitted the cost audit report. In case of a partnership firm, the partner so appointed or any other partner of the same firm is allowed to complete the audit & submit cost audit report subject to his total numbers not exceeding the limit specified in section 224(1-B).

MCA is regularly receiving requests from companies and cost auditors for making corrections in the e-forms 23C & 23D in respect of minor typographical errors or other mistakes such as incorrect financial year, incorrect name of the cost auditor or the cost audit firm, incorrect PAN number, incorrect scope of audit, etc. In MCA21 system, no changes are permitted in the approved e-forms. Therefore, all companies and cost auditors are hereby informed to carefully verify all particulars before uploading e-forms 23C or 23D on the MCA21 portal. In any rare case, if still any error/mistake is observed, it should be brought to the notice of MCA well before its approval enabling it to return the said e-form for re-submission after making the required corrections. Else, the companies and cost auditors shall be required to file fresh e-forms 23C & 23D containing



correct particulars, along with the applicable fee and additional fee.

If a company or the cost auditor contravenes any provisions of this circular, the company and every officer thereof who is found to be in default, and the cost auditor in case he is in default, shall be punishable as per applicable provisions of the Companies Act, 1956. The modifications contained in this circular shall be effective from the financial year commencing on or after the January 1, 2013. One may refer to the above citation for further details.

➤ **SEBI Bars Mini Index Contracts:-**

The SEBI has issued Circular No. CIR/DR MNP/4/2012 dated. 20<sup>th</sup> November, 2012 directing the stock exchanges to discontinue mini derivative (futures and options) contracts on index (Sensex and Nifty). This is done so as to ensure that small/retail investors are not attracted towards the derivatives segment. The stock exchanges have been directed not to issue any fresh mini futures or options contracts though the existing unexpired contracts will be traded till expiry and new strikes can also be introduced in the existing contract months. One may refer to the above citation for further details.

➤ **Amendments to SEBI (Mutual Funds) Regulations:-**

The SEBI has issued Circular No. CIR/MD/DF/24/2012 dated 19<sup>th</sup> November, 2012 amending the SEBI (Mutual Funds) Regulations, 1996 on the following matters:

- Prudential limits and disclosures on portfolio concentration risk in debt oriented mutual fund schemes: The current guidelines on prudential limit for sectoral exposure in debt oriented mutual fund schemes place a limit of 30% at the sector level. In light of the important role played by the Housing Finance Companies (HFCs) in the housing sector, it has been decided that an additional exposure not exceeding 10% of net assets of the scheme shall be allowed only to HFCs as part of financial services sector for prudential limits in debt oriented schemes.

- Brokerage and Transaction Cost : Service tax on brokerage and transaction cost paid for execution of trade, if any, shall be within the limit prescribed under regulation 52 of the Regulations. It is clarified that the brokerage and transaction cost incurred for the purpose of execution of trade may be capitalized to the extent of 12 bps and 5 bps for cash market transactions and derivatives transactions respectively.

Any excess payment may be charged to the scheme within the maximum limit of Total Expense Ratio (TER) as prescribed by regulation 52 of the SEBI (Mutual Funds) Regulations, 1996. Any expenditure in excess of the said prescribed limit (including brokerage and transaction cost, if any) shall be borne by the AMC or by the trustee or the sponsors.

- Credit of exit load to scheme: In terms of new regulation 51A of SEBI (Mutual Funds) Regulations, 1996, the exit load charged, if any, would be credited to the scheme.

One may refer to the above citation for further details.

➤ **Amendment to companies (accounting standards) rules, 2006:-**

The MCA has issued Notification No. F.NO.17/133/2008-CL.V dtd. 29<sup>th</sup> December, 2011 amending the Companies (Accounting Standards) Rules, 2006 in relation to Accounting Standard (AS) 11 relating to "The Effects of Changes in Foreign Exchange Rates". It is provided that in respect of accounting periods commencing on or after the 1st April, 2011, for an enterprise which had earlier exercised the option under paragraph 46 of the Rules, and at the option of another enterprise (such option to be irrevocable and to be applied to all such foreign currency monetary items), the exchange differences arising on reporting of long-term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, in so far as they relate to the acquisition of a depreciable capital



asset, can be added to or deducted from the cost of the asset.

The same shall be depreciated over the balance life of the asset, and in other cases, can be accumulated in a "Foreign Currency Monetary Item Translation Difference Account" in the enterprise's financial statements and amortized over the balance period of such long-term asset or liability. It can be recognised as income or expense in each of such periods, with the exception of exchange differences dealt with in accordance with the provisions of paragraph 15 of the Rules.

It is clarified that to exercise the option, an asset or liability shall be designated as a long-term foreign currency monetary item, if the asset or liability is expressed in a foreign currency and has a term of twelvemonths or more at the date of origination of the asset or the liability. This is subject to the fact that the option exercised by the enterprise shall disclose the fact of such option and of the amount remaining to be amortized in the financial statements of the period in which such option is exercised and in every subsequent period so long as any exchange difference remains unamortized

## **POLICY WATCH**

### **➤ 100% FDI permitted for cold storage facilities:-**

Government has allowed 100% Foreign Direct Investment (FDI) in cold storage facilities. This policy mandates minimum investment of US\$ 100 million with at least 50% of total FDI being invested in 'back-end infrastructure' within three years of the first tranche of FDI. The Government is also implementing schemes aimed at checking wastage of horticulture and agriculture produce. Further, the policy has included capital investment in creation of modern storage capacity including cold chains and post-harvest storage eligible for viability gap funding under support to public private partnership in Infrastructure scheme.

### **➤ RBI and Bank of Japan sign currency swap pact to boost bilateral trade:-**

The Reserve Bank of India (RBI) and Bank of Japan (BOJ) have concluded a three-year bilateral currency swap arrangement. The agreement has become effective from December 4, 2012. The arrangement aims at addressing short-term liquidity difficulties and supplementing the existing international financial arrangements, as one of the efforts in strengthening mutual cooperation between Japan and India. The agreement will enable both countries to swap their local currencies against US dollar for an amount up to \$15 billion. In the past, both countries had a similar arrangement for an amount up to \$3 billion for a period of three years from June 2008 to June 2011.

### **➤ Government to start PPP based electronics manufacturing clusters:-**

The government will start Public Private Partnership (PPP) based manufacturing clusters in India. This will be based on the lines of those in China and Taiwan. The Central government would grant financial assistance of up to Rs 500 million to companies or state governments for setting up each cluster. The government is also expected to create at least 50 electronics manufacturing clusters across the country under the scheme in the next five years. States like Andhra Pradesh, Punjab, Rajasthan, Karnataka, West Bengal, and Kerala have expressed their interests in setting up such manufacturing clusters.

### **➤ 100% FDI Permitted in Power Sector:-**

The government of India as per extant policy has permitted 100% Foreign Direct Investment (FDI) under the automatic route in the power sector. Accordingly, any foreign power company can enter power sector through FDI route. Further, several global power plant equipment manufacturing companies from Japan, Europe and USA have formed Joint Ventures (JV) with Indian Companies for establishing manufacturing base in India for the manufacture of supercritical boilers/turbine generators and technology transfer. Some of the JVs include the Mitsubishi Heavy Industries Ltd., Japan - L&T, Hitachi-BGR, Toshiba-JSW, Alston-Bharat Forge, etc.



➤ **Chhattisgarh becomes first state to pass Food Security Act:-**

With the passing of the Chhattisgarh Food Security Bill 2012, Chhattisgarh has become the first state in the country which has made availability of sub sized food-grains to 5 million poor families in the state a legal right. The Act provides for schemes to offer free meals to the destitute and homeless, through local agencies called Anganwadis. The Act also has provisions to provide cooked meals to pregnant women and lactating mothers and take-home meals for children up to six years.

**INDUSTRY WATCH &  
CORPORATE HIGHLIGHT**

➤ **CCEA approves sale of 9.5% stake in NTPC:-**



The Cabinet Committee on Economic Affairs (CCEA) has approved the sale of the government's 9.5% stake in power producer NTPC. This will help meet the government's target of raising Rs 300 billion from asset divestments in the current fiscal year. Also, the government has decided to re-allocate three coal blocks that were taken away from NTPC for delay in the development of those mines. With the re-allocation of coal blocks, the overall valuation of NTPC is expected to go up. This would help the government to get higher returns from the proposed Share sale

➤ **Medical technology firm Trivitron acquires Finland firm:-**

Medical technology company Trivitron Healthcare has acquired Finland-based Ani Lab system for €15.8 million. Ani Lab systems is a group of companies comprising Ani Biotech, Ani Lab systems, Biopoint and K3, specializing in manufacturing of neonatal screening, cardiac, gastro, respiratory diagnostics kits and infectious disease testing products. These 100% acquisitions gives Trivitron access to a global manufacturing facility and enable it to offer new product lines in South Asia, South-East Asia, West Asia and Africa.

➤ **EXIM to open a representative office in Myanmar:-**

Export- Import Bank of India (EXIM) will open a representative office in Myanmar to increase bilateral trade between Northeast India and Myanmar. The trade link with Myanmar and transit facility with Bangladesh will open up new opportunities for the northeast, particularly agricultural produce. EXIM bank has extended line of credit to Bangladesh and Myanmar. EXIM bank has 10 offices across the country and seven offices across the world. Northeast India accounts for Rs 10 billion exports out of which agriculture account for less than 5%.

➤ **Piramal Enterprises' subsidiary acquires Abacus International:-**

Piramal Enterprises' subsidiary Decision Resources Group, which is one of the world's leading research and advisory firms focusing on healthcare insights and analysis, has acquired Abacus International, a firm providing evidence-based global market access solutions for leading healthcare companies. This acquisition by Massachusetts-based Decision Resources Group will result in a significant global expansion of the group's market access capabilities. Abacus will be part of the market access business unit at Decision Resources Group, which currently includes brands like Fingertip Formulary, Health-Leaders-Inter-Study, PharmaStrat and Pinsonault.

➤ **GREENKO buys HYDEL projects for Rs 1.32 billion:-**





Hyderabad-based renewable energy company, Greenko has acquired three hydel power projects in Himachal Pradesh for about Rs 1.32 billion. The company listed on the London Stock Exchange's AIM, has a generating portfolio of over 275 MW and is on track to set up total installed capacity of 1,000 MW by 2015, including wind power projects. Greenko's projects include wind power generation farms in Maharashtra and Andhra Pradesh.

➤ **FDI inflows rise to \$4.67 billion in Sept 2012:-**

India's Foreign Direct Investment (FDI) inflow rose to \$4.67 billion in September 2012. The foreign inflows in August 2012 had declined by 20% to \$2.26 billion after registering an increase in July 2012 at \$1.47 billion.

The sectors which received large FDI inflows in September 2012 included services (USD 3 billion), metallurgical (USD 685 million), construction (USD 644 million), and automobile (USD 635 million).

➤ **Internet's share in GDP could touch \$100 billion by 2015 :-**

India's internet industry can contribute up to \$100 billion to the country's Gross Domestic Product (GDP) and generate about 22 million jobs by 2015. The pre-requisites for achieving this goal is to extend rural infrastructure investments in the hinterlands, reduce the cost of access to increase internet usage, increase digital literacy, and create favorable business environment for internet-based enterprises.

➤ **IVRCL bags Rs 16.05 billion Haryana road project:-**

IVRCL Ltd has entered into a Memorandum of Understanding (MoU) with the Haryana government for the development of Rai Malikapur-Kharak road corridor. The Rs 16.05 billion project corridor will cover a stretch of 151 km and boost the north-south connectivity. The Tollway project, which IVRCL's erstwhile subsidiary IVRCL Assets & Holdings Ltd has bagged, includes new four-lane bypass links, several bridges, and service roads. It is to be executed under design, build, finance, operate, and transfer mode.

➤ **Planning commission sets \$100 billion target for pharma sector by 2020:-**





The Planning Commission has set a target for the Indian pharmaceutical industry to reach \$ 100 billion by 2020 and account for 5% share of the global drug industry in the next five years. Currently, the Indian pharmaceutical industry is valued at \$ 22 billion and is the third largest in terms of volume and 13th in terms of value globally. The Planning Commission has also recommended various steps which include capacity building of private sector to meet World Health Organization- Good Manufacturing Practice (WHO-GMP) standards and other international manufacturing requirements. The other recommendations include developing a common infrastructure in drug discovery and development such as manufacturing, distribution, exports and medical devices.

➤ **SESA Goa acquires balance 49% stake in Liberian project:-**

Sesa Goa has acquired the remaining 49% of the outstanding common shares of Liberia's Western Clusters project from Elenilto Minerals & Mining LLC Delaware, for a cash consideration of \$33.5 million. Sesa also has plans to ramp up the production by up to 30 MT in the second phase which is expected to begin by 2016-17. The company would be spending about Rs 4-4.5 billion on the project this year. The investments would be made largely on payments to the local government, exploration, equipment and other related studies for the project.



**Statutory compliance calendar for the month of December 2012**

<b>Due date</b>	<b>Statutory compliance under Act</b>	<b>particulars</b>	<b>Governing Authority</b>
			
06/12/2012	Service Tax	Payment of monthly service tax for the month of October by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of October on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/12/2012	Income-Tax	Deposit of Income-Tax TCS and TDS deducted in October	Central Board of Direct Tax.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
	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.
10/12/2012	Central Excise	Monthly central excise return in form ER-1/ER-2 by other than SSI	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	The securities and exchange board of India Act-1992
15/12/2012	Income-Tax	Advance Income-Tax under section 211 of Income-Tax Act by corporate (third installment) and non-corporate assesses (second installment)	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of November (b) Monthly return in form 5 for employees joining Provident Fund during November 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 November	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/12/2012	ESIC	Payment of ESIC contribution for the month of November	The employees' state insurance Act-1948. Ministry of labour and employment.
25/12/2012	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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- Succession Planning.
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*The head quarter of Rajput Jain & Associates, Chartered Accountant is located in Delhi, India. Beside this Rajput Jain & associates has presence all over India, with Nepal, and United States of America, Australia, through its associates / affiliates.*

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