Tax & Corporate law Bulletin

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January 2012

From the Editor's Desk...

Dear Reader,

Greetings for the season.

We wish you a wonderful new year filled with abundance, joy and treasured moments. May almighty ponder upon our readers with his marvelous blessings, happiness, peace and health.

Some updates of the month of January: Revised instruction for filing Form 49A and Form 49AA, Cabinet Decision on the FDI in Retail, Manufacturing rises to 6 month high in December 2011 and read many more…

We eagerly await your feedback on the bulletin.

Yours truly,

Rajput Jain & Associates

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DIRECT TAX

- **Revised instruction for filing Form 49A and Form 49AA**

Recently, CBDT has notified new forms for making PAN application. The Form 49A is prescribed for individuals who are citizen of India, HUF and others entities which are registered or formed in India. The Form 49AA is prescribed for Individuals who are not Citizen of India and other entities formed or registered outside India.

The revised instruction for filling up Form 49A and Form 49AA has been issued by the CBDT are available.

- **INCOME-TAX (NINTH AMENDMENT) RULES, 2011 - INSERTION OF RULE 40BA AND FORM NO. 29C**

Notification no. 60/2011 [F.NO.133/70/2011-SO (TPL)] dated 1st December, 2011 In the Income-tax Rules, 1962, after rule 40B which place some restrictions and conditions on the deductions of expenses available to an assessee assessable as a partnership firm, the following rule shall be inserted, namely:-

“Special provisions for payment of tax by certain limited liability partnerships (40BA). The report of an accountant which is required to be furnished by the assessee under sub-section (3) of section 115JC, shall be in Form No.29C."

Report under section 115JC (computing adjusted total income and minimum alternate tax of the limited liability partnership) will be provided in Form No. 29C.

- **Section 2(14), 2(47), 5(2) & 9(1) (i), 163 & 195: Transfer of Share of foreign company outside India & liability to Capital Gain and TDS, Tax Avoidance**

Section 9 covers only income arising from a transfer of a capital asset situated in India and it does not purport to cover income arising from the indirect transfer of capital asset in India; acquisition of solitary share of a foreign company by assessee, a non-resident company, from another non-resident company under a share purchase agreement was a straightforward share sale and not an asset sale therefore, the said offshore transaction is not taxable in India; consequently there was no liability to deduct TDS under sec. 195 nor the assessee can be proceeded against sec. 163

In the application of a judicial anti-avoidance rule, the Revenue may invoke the ‘substance over form’ principal or ‘piercing the corporate veil’ test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant; while ascertaining the legal nature of the transaction the Revenue/Court has to look at the entire transaction as a whole and not to adopt a dissecting approach.

Vodafone International Holdings B.V. vs. Union of India & ANR (2010)247 CTR (SC) 1. 20th January, 2012

RECENT JUDGEMENTS

COURT DECISIONS

- **Section-2(29A),2(42A)&54: Date of acquisition in case of DDA flats**

Allottees of a flat under self-financing scheme of the DDA gets title to the property on issuance of allotment letter, as clarified vide Circular No. 471, dated 15th Oct 1986 and, therefore, capital gain arising on sale of flat by the assessee on 6th Jan, 1989 which was allotted to him on 27th Feb, 1982, by issuance of an allotment letter was a long term capital gain, irrespective of the date of allotment of specific flat number and delivery of possession on 15th May, 1986; assessee was entitled to exemption u/s. 54 on reinvestment of sale proceeds in another house. Vinod Kumar Jain vs. Commissioner of Income Tax & ORS. (2011) 244CTR (P&H) 346.

- **Section- 14A&36(1)(iii) : Source of funds for investment in tax free income**

Assessee having not produced any material showing the source from which shares were acquired by it, though in earlier year, proportionate interest amount payable by assessee is to be disallowed u/s 14A having regard to the investment in shares and total interest-bearing loan. Dhanuka & Sons vs. Commissioner of Income Tax (2011) 244 CTR (Cal) 511.

- **Section- 23(1)(b) : Security deposit & notional ratable value**

Where the security deposit is to circumvent real rent, the same shall fall within its ambit as income from house property; in the facts and circumstances, interest @ 9 per cent per annum on security deposit of Rs. 35, 00,000 which was received by the assessee from the tenants, would be treated as taxable income of the assessee under the head 'Income from house property'. Commissioner of Income Tax vs. K. Streetlite Electric Corporation (2011) 244CTR (P&H) 647.

- **Section- 28(i), 36(1)(vii) & 37(1): Expenditure relating to business**

Assessee was not entitled to claim deduction of amount advanced by it to its sister concern for enabling latter to tender a bid to acquire a plot of land when the earnest money paid by sister concern was forfeited by the authority ; at the time when the amount was advanced by the assessee.

The sister concern was not in position to allot any space in the proposed multi-storey complex to be constructed by it; also, as the sister concern had purchased certain flats from the assessee in the assessment year preceding the assessment year in question and it was paying rent to the assessee, the picture portrayed that the sister concern did not have the necessary funds at hand to return the money paid by the assessee to it is nebulous. Pragati Construction Co. vs. Deputy Commissioner of Income tax. (2011) 244CTR (Del) 479.

- **Section- 37(1) : Third party mortgage and business expenditure**

Assessee having paid money to the bank in his capacity as surety towards discharge of the loan obtained by its sister concern so as to secure release of its immovable property which was mortgaged with the bank and to avoid breach of the terms of the development agreement where under assessee was obliged to convey marketable title to the purchasers of the flats to be built on the said property, said payments is allowable as business expenditure. Commissioner of Income Tax & ANR. Vs. Rudra Industrial Commercial Corporation (2011) 244 CTR (Kar) 304.

INDIRECT TAX

SERVICE TAX

- **Incidence of service tax**

Where the Municipality rented its premises to the tenant, it was held that even where the contract does not provide for payment of service tax, the Municipality can pass on service tax (additionally) to the tenant since there is no prohibition in the service tax law from doing so [Kishore K.S. vs. Cherthala Municipality 2011 (24 STR538 (Ker.)].

- **Synopsis of notifications, Circulars & Letters**

Central Government vide Notification No.49/2011-ST, Notification No.50/2011- ST & Notification No. 51/2011-ST all dated 30th December, 2011 has deferred the levy of service tax on taxable services provided by Government Railways to any person in relation to transport of goods by rail, to 1st April, 2012.

Central Government Vide Notification No. 52/2011-ST dated 30th December, 2011 has superseded Notification No. 17/2009-ST dated 6th July, 2009 w.e.f. 3rd January, 2012. The exporter of goods has option either to apply for refund of Service Tax on the basis of schedule rates prescribed for descriptions of goods exported or to avail refund of Service Tax paid on "Specified Input Services" on the basis of submissions of documents. The conditions and procedure for availing refund of service tax is laid down in the said notification.

CBEC vide Order No. 2/2011-ST dated 16th Dec, 2011 has specified the documents required to be submitted along with ST-1 application under Rule 4(1) of The Service Tax Rules, 1994 :-

(a) Copy of PAN Card
(b) Proof of residence
(c) Constitution of the applicant
(d) Power of attorney in respect of authorised person

The said documents are required to be submitted with the service tax department within 15 days from the date of online filing of ST-1 & the time limit of 7 days for issuance of Service Tax registration certificate as prescribed in Rule 4(5) of The Service Tax Rules, 1994 will be applicable from the date of submission of the complete application including above documents.

CBEC vide Order No. 3/2011-ST dated 29th December, 2011 has extended the date of filing of half yearly service tax return for the period April to September, 2011 from 26th December, 2011 to 6th January, 2012.

Central Government vide Circular No.148/17/2011-ST dated 13th December, 2011 clarified on levy of service tax on distributors/sub-distributors of films & exhibitors of movie:

Principal to Principal Basis:

- Movie being exhibited by Theatre Owner or Exhibitor on his account (i.e. the copyrights are temporarily transferred):- Service Tax under Copyright Service to be provided by Distributor or Sub- Distributor or Area Distributor or Producer etc, as the case may be.
- Movie being exhibited on behalf of Distributor or Sub-Distributor or Area Distributor or Producer etc. (i.e. no copyrights are temporarily transferred):- Service Tax under Business Support Service / Renting of Immovable Property Service, as the case may be, to be provided by Theatre Owner or Exhibitor.

Arrangement under unincorporated partnership/ joint/ collaboration basis:

- Service provided by each of the person i.e. the 'new entity'/ Theatre Owner / Exhibitor / Distributor or Sub-Distributor or Area Distributor or Producer etc. as the case may be, is liable to Service Tax under applicable service head.

It is further clarified that the arrangements mentioned in this Circular will apply mutatis mutandis to similar situations across all the services taxable under the Finance Act.

CBEC vide letter F.No. 137/21/2011-ST dated 15th July, 2011, Central Government had clarified that International Private Leased Circuit (IPLC) charges paid by BPOs/MNCs to services providers situated outside India are liable to service tax under the category of "Business Support Services (Section 65(105)(zzzq))" rather than "Telecommunication Services (Section65(105)(zzzx))" and service tax is payable under Reverse Charge Mechanism U/s.66A read with Rule 2(1)(d) of the Service Tax Rules, 1994. Central Government vide Letter F.No.137/21 /2011-ST dated 19th December, 2011 has now clarified that the view taken vide above said letter was erroneous on the grounds that:

- The IPLC is specifically covered by the definition of the telecommunication service (Section 65(109a) (iv).

- As per the said section these services are taxable only when provided by a person who has been granted a license under the first proviso to section 4(1) of the Indian Telegraph Act, 1985.

- It is only because the foreign telecom service provider cannot constitute a telegraph authority under an Indian law that they remain outside the taxability clause of the telecommunication service. In nutshell, it is now clarified that the IPLC charges paid to service providers situated outside India are neither liable under the category of "Telecommunication Services (Section 65 (105)(zzzx))" nor under the Category of "Business Support Services (Section 65(105) (zzzq))"

CENTRAL EXCISE

➢ **Exempts Central Excise duty on pile liners fabricated at the site of construction for use at the marine site retrospectively w.e.f. April 1st, 2005 to November 17th, 2011**

The benefit under this notification to exempt the goods falling under chapter '7305' during the period 1st April 2005 to 17th Nov. 2011 shall be available only if the assessee reverses the input credit taken, if any, for the purpose of fabrication at the site of construction for use at the marine site. (Notification No. 23 /2011–CE (N.T.) dated 1st December, 2011)

➢ **Extending of rebate of duty paid on export of excisable goods to Nepal**

With effect from 1st March, 2012 the rebate of whole of the duty paid on the export of excisable goods shall be available to any country except to Bhutan. As a result of this Nepal has been brought at par with all other countries. (Notification No. 24 /2011–CE dated 5th December, 2011)

➢ **The notification granting here bate on goods exported to Nepal Rescinded**

In view of the notification 24/2011 withdrawing the rebate granted under 19/2004 the Notification No. 20/2011 stands invalid and hence rescinded. This notification shall been force from 1st March, 2012. (Notification No. 25 /2011–CE dated 5th December, 2011)

➢ **Extension of benefits and other mandatory conditions to Nepal**

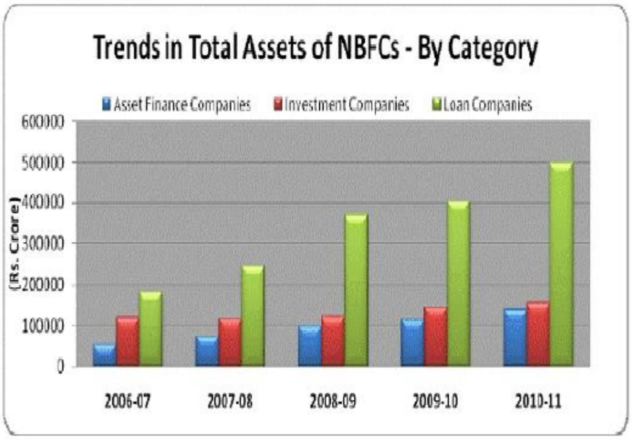
As Nepal has now been brought at par with all other countries the procedure and conditions for export of all excisable goods without the payment of duty shall be applicable for exports to Nepal also. Similarly, conditions for procurement of the goods without payment of duty for the purpose of USE in the manufacture of such goods will extend to Nepal (Summary of Notification No. 26/2011, 27/2011 and 28/2011- CE, dated 5th December, 2011)

➢ **Amends the Notification No. 45/2001 Central Excise**

The conditions to be followed in order to export goods to Nepal and Bhutan under Bond shall now be mandatory for exports to Bhutan only. Further, paragraph specifying the conditions to be followed for exports of capital goods to Nepal is no longer valid and hence has been omitted. (Notification No. 29 /2011–CE dated 5th December, 2011)

- **Introduction of new category of NBFC-MFIS**

Chart 6: Trends in total assets of NBFCs



The RBI has issued Notification No. DNBS.CC.PD.No. 250/03.10.01/2011-12 dated 2nd December, 2011 whereby based on recommendations of the YH Malegam Committee which was constituted to study issues and concerns in the Micro Finance Institutions (MFI) sector and hence a new category of NBFCs are created 'Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs). Consequently there would be seven categories of NBFCs and which are:

- Asset Finance Company (AFC)
- Investment Company(IC)
- Loan Company (LC)
- Infrastructure Finance Company (IFC)
- Core Investment Company (CIC)
- Infrastructure Debt Fund -Non Banking Financial Company (IDFNBFC)
- Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI).

One can refer to this Notification which contains the regulatory framework for NBFC-MFIs, and to this notification, the notifications amending the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 and amending the Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 are enclosed.

FEMA

- **Cabinet Decision on the FDI in Retail:-**

Press Release dated November 28th, 2011

Presently, FDI in Multi Brand Retail Trading (MBRT) is prohibited. FDI in the Single Brand Retail Trading (SBRT) sector is permitted, up to 51%, under the Government/FIPB route, subject to the certain conditions.

- **Cabinet has made following decision in respect of FDI in retail**

To permit FDI in MBRT in all products, in a calibrated manner, subject to the following conditions:

- FDI in MBRT may be permitted up to 51%, with Government approval;
- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fish very and meat products, may be branded.
- Minimum amount to be brought in, as FDI, by the foreign investor, would be US$ 100 million.
- At least 50% of total FDI brought in shall be invested in 'backend infrastructure', where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units and Expenditure on land cost and rentals, if any.
- At least 30% of the procurement of manufactured/processed products shall be sourced from 'small industries' which have a total investment in plant & machinery not exceeding US$ 1.00 million.
- Self-certification by the company, to ensure compliance of the condition as above, which

CORPORATE LAWS

➢ Guidelines on KYC regulations and on in-person verification

The SEBI has issued Circular No. MIRSD/Cir- 26 /2011 dated December 23, 2011 in relation to the Know-Your-Client Registration Agencies Regulations, 2011 (KRA Regulations) issued earlier and has now issued guidelines to implement the KRA Regulations effectively. The guidelines are specifically issued for intermediaries, the KRAs and on In-person verification (IPV). The guidelines provide that the KRA system shall be applicable for all new client accounts opened from January 1, 2012. Only for the client accounts opened between January 1 and January 31, 2012, the intermediaries may upload the KYC data on the KRA system and send the relevant KYC documents to KRA, by February 15, 2012. However, for client accounts opened from February 1, 2011, the intermediaries shall continue to follow the requirement of sending the same within 10 working days as provided in this circular. The existing clients can continue to trade/invest/deal with their intermediaries as per the current practice.

➢ Issuance of non-convertible debentures by NBFCS

The RBI has issued Circular No. DNBS.CC.PD.No.255/ 03.10.01/ 2011-12 dated December 30th, 2011 stating that it has come to its notice that some NBFCs have raised funds under private placement by issuing non-convertible debentures (NCDs) of maturity less than 90 days. This is in clear violation of the Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010 dated June 23, 2010 issued by Internal Debt Management Department, Reserve Bank of India. It is now advised by the RBI that all NBFCs may note that the issue of NCDs of original or initial maturity up to one year are governed under the abovementioned Directions and these Directions may be followed for meticulous compliance.

➢ Clarification on revised capital adequacy framework for off balance sheet items for NBFCs

The RBI has issued Circular No. DNBS.CC.PD.No.254/03.10.01/2011-12 dated 30th December, 2011 replacing the existing provisions relating to credit conversion factors for credit default swaps (CDS) and it is provided that now NBFCs are only permitted to buy credit protection to hedge their credit risk on corporate bonds they hold. The bonds may be held in current category or permanent Category and the capital charge for these exposures will be as under:

- For corporate bonds held in current category and hedged by CDS where there is no mismatch between the CDS and the hedged bond, the credit protection will be permitted to be recognised to a maximum of 80% of the exposure hedged. Therefore, the NBFC will continue to maintain capital charge for the corporate bonds to the extent of 20% of the applicable capital charge. This can be achieved by taking the exposure value at 20% of the market value of the bond and then multiplying it with the risk weight of the issuing entity. In addition to this, they bought CDS position will attract a capital charge for counterparty risk which will be calculated by applying a credit conversion factor of 100 percent and a risk weight as applicable to the protection seller i.e. 20 percent for banks and 100 per cent for others.

- For corporate bonds held in permanent category and hedged by CDS where there is no mismatch between the CDS and the hedged bond, NBFCs can recognize full credit protection for the underlying asset and no capital will be required to be maintained thereon. The exposure will stand fully substituted by the exposure to the protection seller and attract risk weight as applicable to the protection seller i.e. 20 per cent for banksand100 per cent for others.

could be cross-checked as and when required. Accordingly, the investors to maintain accounts, duly certified by statutory auditors.

- Retail sales locations may be set up only in cities with a population of more than 10 lakhs as per 2011 Census. Only 53 cities qualify for FDI in multi-brand retail. For the rest of the country, current policy regime will apply. In the current regime, 100% FDI is allowed up to wholesale cash and carry point from which franchise/small retailers are able to source quality products for sale to the public at large.
- Government will have the first right to procurement of agricultural products.

To permit 100% FDI in SBRT, subject to the following conditions:

- FDI in single brand retail trading may be permitted up to 100% with Government approval;
- Products to be sold should be of a 'Single Brand' only;
- Products should be sold under the same brand internationally i.e.

Products should be sold under the same brand in one or more countries other than India;

- 'Single Brand' product-retailing would cover only products which are branded during manufacturing;
- The foreign investor should be the owner of the brand.
- In respect of proposals involving FDI beyond 51%, 30% sourcing would mandatorily have to be done from SMEs village and cottage industries, artisans and craftsmen. Specifically in Article 7(3) of the India-UK there is any need to refer to the UN Model Convention?

Director Income Tax, Delhi vs. M/s Maersk Company ltd (2013-tii-17-hc-ukhand-intl) dated 23rd November, 2012

Whether the salaries can be charged to tax in India if as per treaty between India – Denmark, if the stay of employees does not exceed 183 days and the salaries either are not borne by a PE or any resident of India?

As the residence status of employer is of UK, will it affects the taxability of remuneration to Danish employees in India? Will the income be taxable if the employer has a PE in India?

Held:-

Tribunal found as a fact that each of the 13 Danish nationals were remunerated in respect of employment in India for a period not exceeding 183 days in the concerned fiscal year and that the remuneration was paid by or on behalf of an employer, who is not a resident of the country and, in any event, the remuneration was not borne by a permanent establishment or a fixed base, which the employer has in India. Tribunal, accordingly, held that those remunerations are, therefore, in view of the said treaty, taxable at Denmark and not in India.

It is being contended that the assessee is not a resident of Denmark, instead it is a resident of UK. That is of hardly any importance, inasmuch as, treaty requires employer to be a non-resident of India and not necessarily a resident of Denmark.

Even if the assessee has a permanent establishment or fixed base in India, the same is of no consequence, inasmuch as, it is to be shown and established that the remuneration is borne by that establishment or fixed base, which the assessee has in India. Tribunal has noted that the remuneration was not borne by any permanent establishment or a fixed base, which the assessee had, if any, in India.

No question of law has arisen in these appeals. They are basically questions of facts and the decisions rendered are based on accepted facts. Accordingly, revenue appeal is dismissed.

- **Issue of equity shares under the FDI scheme allowed under the Government route**

  A.P. (DIR Series) Circular No.55 dated 9th December, 2011

RBI vide A.P. (DIR Series) Circular No. 74 dated June 30, 2011 allowed issue of equity shares/ preference shares under the Government route by conversion of import of capital goods / machineries / equipments (including second-hand machineries) and pre-operative / pre-incorporation expenses (including Payments of rent, etc.), subject to terms and conditions stated therein.

➢ **Foreign Investment in Pharmaceuticals Sector Amendment to the Foreign Direct Investment Scheme**

A.P. (DIR Series) Circular No. 56 dated 9th December, 2011

The Government of India has vide Press Note 3 of 2011 dated November 8th, 2011, reviewed and amended the policy for pharmaceuticals sector. Accordingly, the RBI has issued a circular to give effect to the following amendments made in Consolidated FDI Policy Circular 2 of 2011 dated 30th September, 2011:

- FDI, up to 100% would continue to be permitted for green field investments in the pharmaceuticals sector, under the automatic route.

- FDI, up to 100%, would be permitted for brown field investment (i.e. investments in existing companies), in the pharmaceutical sector, under The Government approval route.

➢ **Risk Management and Inter Bank Dealings Press Release: 2011-2012/945 and A. P. (DIR Series) Circular No. 58 dated 15th December, 2011**

Ref.: Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000

Keeping in view the developments in the foreign exchange market, it has been decided to implement the following measures with immediate effect until further review.

- Facility for allowing forward contracts, involving the Rupee as one of the currencies, booked by residents to hedge current account transactions regardless of the tenor and to hedge capital account transactions falling due within one year, to be cancelled and rebooked has been withdrawn. Now, Forward contracts booked by residents irrespective of the type and tenor of the underlying exposure, once cancelled, cannot be rebooked.
- Under probable exposures based on past performance residents were allowed to hedge currency risk on the basis of a declaration of an exposure and based on past performance up to the average of the previous 3 financial years' (April to March) actual import/export turnover or the previous year's actual import/export turnover, whichever is higher. Further, contracts booked in excess of 75% of the eligible limit were to be on deliverable basis and could not be cancelled.

It has now been decided that:

- For importers availing of the above past performance facility, the facility stands reduced to 25% of the limit as computed above. In case of importers who have already utilized in excess of the revised / reduced limit, no further bookings may be allowed under this facility.
- All forward contracts booked under this facility by both exporters and importers hence forth will be on fully deliverable basis. In case of cancellations, exchange gain, if any, should not be passed on to the customer.

- All cash/tom/spot transactions by the Authorised Dealers on behalf of clients will be undertaken for actual remittances / delivery only and cannot be cancelled / cash settled.
- Foreign Institutional Investors (FIIs) are currently allowed to hedge currency risk on the market value of entire investment in equity and/or debt in India as on a particular date. The contracts once

cancelled cannot be rebooked except to the extent of 10% of the market value of the portfolio as at the beginning of the financial year. The forward contracts may, however, be rolled over on or before maturity. Henceforth forward contracts booked by the FIIs, once cancelled, cannot be rebooked. The forward contracts may, however, be rolled over on or before maturity.

- The Board of Directors of Authorised Dealers were allowed to fix suitable limits for various Treasury functions with net overnight open exchange position and aggregate gap limits required to be approved by the RBI.
  It has now been decided that:

  a) Net Over night Open Position Limit (NOOPL) of Authorised Dealers would be reduced across the board. Revised limits in respect of individual banks are being advised to the Authorised Dealers separately.
  b) Intra-day open position / daylight limit of Authorised Dealers should not exceed the existing NOOPL approved by the RBI.
  c) The above arrangement would be reviewed on an ongoing basis keeping in view the evolving market conditions.

➢ **External Commercial Borrowings (ECB) for Micro Finance Institutions (MFIs) and Non-Government Organizations (NGOs) engaged in micro finance activities under Automatic Route**

Press Release: 2011-2012/965 and A. P. (DIR Series) Circular No. 59 dated 19th December, 2011

The existing ECB policy has been reviewed in consultation with the Government of India and it has been decided that henceforth MFIs may be permitted to raise ECB up to USD 10 million or equivalent during a financial year for permitted end uses, under the Automatic Route. The detailed guidelines on ECB for MFIs with necessary safeguards are contained in the circular.

It has also been decided that NGOs engaged in micro finance activities can avail of ECB up to USD 10 million or equivalent per financial year under the automatic route as against the present limit of USD 5 million or equivalent per financial year. All other conditions remain unchanged. All other ECB parameters such as minimum average maturity, all-in-cost ceilings, restrictions on issuance of guarantee, choice of security, parking of ECB proceeds, prepayment, refinancing of ECB, reporting arrangements under the Automatic Route should be complied with by MFIs/NGOs availing ECBs. The designated AD has to certify the status of the borrower as eligible and involved in micro finance and ensure at the time of draw down that the forex exposure of the borrower is fully hedged.

These amendments to ECB policy will come into force with immediate effect and the framework with respect to MFIs will be subject to review after one year.

POLICY WATCH

➢ **Qualified Foreigners Investors (QFIs) allowed to invest directly in equities dated 1st January 2012**

THE Government has announced a new scheme under which a foreign individual, a foreign pension fund or even a foreign trust will be able to invest directly in the Indian equity market. These investors will be called 'Qualified Foreign Investors' (QFIs). The new scheme is expected to be operationalize from January 15, 2012. This has been done in order to widen the class of investors, attract more foreign funds, reduce market volatility and deepen the Indian

capital market. The investors are already allowed direct access to Indian mutual fund schemes. The latest decision is the next logical step in the direction. At present, foreign institutional investors (FIIs) or foreigners, through sub-accounts with registered FIIs, can invest in the equity market. Unregistered foreign individuals and institutions invest through participatory notes (PNs). However, investment is restricted to QFIs from countries that are compliant with the Financial Action Task Force (FATF) recommendations and are signatories to the international body of securities market, International Organization of Securities Commissions (IOSCO's) and memorandum of understanding.

- **Promoter-heavy companies allowed placement route**

Promoters holding above 75% can also use exchange window to pare stake. In a move that will help the government's divestment programme, the Securities & Exchange Board of India (SEBI) introduced two new methods - Institutional Placement Programme (IPP) and offer for sale of shares through the stock exchange, to help companies comply with the minimum public shareholding norms. Under the Securities Contracts Regulation. Rules (SCRR), all listed companies should have a minimum of 25% of public shareholding.

Using the IPP route, companies can increase public shareholding by as much as 10% either by way of fresh issue of capital or dilution by the promoters through an offer for sale. These new routes will help the government pare its stake in PSUs. Promoters of private companies like Wipro, DLF and Mundra Port & SEZ will also be able to reduce their stake to 75% through these routes.

- **Telecom companies have been mandated to ensure that towers are run on hybrid power**

All telecom companies have been mandated to ensure that that at least 50% of all rural towers and 20% of the urban towers are powered by hybrid power by 2015. Further 75% of rural towers and 33% of urban towers are to be powered by hybrid power by 2020.

These directions have been issued after the government has accepted sector regulator Trai's recommendations on green telephony.

The new rules also mandate that all telecom products, equipments and services in the telecom network should be certified Green Passport [GP] by the year 2015. The telecoms department's technical arm - Telecommunication Engineering Centre - will certify telecom products, equipments and services on the basis of Energy Consumption Rating ratings. Besides, all service providers should declare to the regulator the carbon footprint of their network operations. This declaration should be done twice in a year

- **Tax information exchange agreement signed with Macau**

India will soon be able to get banking information from Macau for tax administration purposes. A Tax Information Exchange Agreement to this effect was recently signed with Macau, a special administrative region of China. Macau is one of the most well-known offshore financial centers and tax havens. Gambling and tourism account for over 50% of the revenue for this city- State.

The agreement was signed by the Central Board of Direct Taxes. Prior to signing the tax agreement with

Macau, India had signed such agreements with seven jurisdictions the Bahamas, Bermuda, the British Virgin Islands, the Isle of Man, the Cayman Islands, Jersey and Liberia. All the agreements, except those with Liberia and Jersey, have come into force.

- **Andhra Pradesh eyes Rs 500 billion investment in infrastructure sector in next 2 years**

Andra Pradesh aims to attract investments to the tune of Rs 500 billion in the next two years in the infrastructure sector. This will be in addition to the Rs 6,470 billion investment proposals for multi-sectoral projects it received during the recent Partnership Summit-2012. There would be massive investments into ports, airports, natural gas and other infrastructure projects in the next two years and take Andhra Pradesh ahead of Gujarat.

In the last two years the state suffered considerably due to various reasons. Now things have returned to normal and investments are coming in again. The Airports Authority of India also got the approval for operationalsing the newly-constructed terminal building at the Rajahmundry airport. The new terminal building was built at a cost of Rs 300 million.

INDUDUSTRY WATCH & CORPORATE HIGHLIGHT

- **Manufacturing rises to 6 month high in December 2011**

Manufacturing activity climbed to a six-month high in December 2011 as new orders rose, reinforcing signs of industrial revival. The HSBC Market India Manufacturing Purchasing Managers' Index rose to 54.2 from 51.0 in November, the highest level since June and the sharpest monthly rise since April 2009. The rebound in manufacturing follows core sector numbers that hinted at a pick-up in industrial growth. The index for eight core sector industries, which have a combined weight of 38% in the Index of Industrial Production (IIP), expanded 6.5% in November. Activity in the manufacturing sector rebounded in December 2011, led by higher demand from both domestic and foreign clients.

- **GMDC gets Gujarat government's approval for 3 joint ventures**

The Gujarat government has approved three joint venture projects proposed by the state run Gujarat Mineral Development Corporation (GMDC). In the first JV, GMDC plans to set up a specialty aluminum chemical project in Kutch district in collaboration with Alumina Refinery Pvt. Ltd, with investment of Rs 300 million.

The plant will have 18,000 Tonnes Per Annum (TPA) production capacities and require 54,000 Metric Tonnes Per Annum (MTPA) of bauxite. GMDC will have 26% stake while Alumina Refinery will hold 74% stake in the JV. The project will have equity debt ratio of 1:2. In the second JV, GMDC will set up a zeolite, dry beneficiation and prop pants projects in Kutch in collaboration with Credo Industries, with investment of Rs 700 million.
The state PSU has also got approval to set up a fluro spar plant in a JV with Gujarat Fluro chemicals and Navin Fluorine International at the investment of Rs 400 million.

- **JP Morgan invests Rs 1 billion in Narain Karthikeyan's green power company**

JP Morgan Asset Management has recently invested Rs 1 billion in Leap Green Energy Pvt. Ltd, a company promoted by India's ace motor racer Narain Karthikeyan's family. Leap Green owns installed capacity of 100 MW of wind assets, which is to be doubled in the current year. JP Morgan first invested Rs 1.07 billion. The investment was made into both equity and convertible debt instruments, which, when converted would give JP Morgan a majority stake. Therefore, JP Morgan has invested over Rs 2 billion in Leap Green, which describes itself as a green Independent Power Producer. JP Morgan's investment in Leap Green underscores the interest that private equity funds are showing in renewable energy sector. There have been quite a few deals in the last six months, the biggest of them being Rs 10 billion in Re New Wind Power.

- **Cadila's JV on track for new vaccine's clinical test in India**

CADILA Pharmaceuticals has received regulatory approval for conducting rabies vaccine toxicology studies in India and clinical study of influenza vaccine is planned for 2012. CPL Biologics (CPLB), its Joint Venture (JV) in India with US based Novavax Inc, is preparing to initiate clinical studies of vaccines to prevent influenza and rabies, in 2012 and 2013.

CPLB completed positive preclinical immunogenicity studies of a rabies G-protein nanoparticle vaccine and recently received approval from the Review Committee on Genetic Manipulation (RCGM) to begin toxicology studies of its vaccine prior to initiating human clinical trials. The CPLB facility at Dohlka taluka of Ahmedabad will be used initially to produce clinical supplies of the two vaccines and will later be used to produce commercial products as well. Novavax is a clinical stage biopharmaceutical company creating novel vaccines for infectious diseases using virus like particle and recombinant Nano particle technology.

- **Tyre exports up 25% in April - November 2011**

Tyre exports increased 25% during the April-November 2011 period of the current financial year. During the period, a total 5.03 million tyres were shipped compared to 4.01 million in the same period of the last financial year.

A good turnaround was noted in November 2011 as the shipments rose to 652,390 tyres as against 587,000 in the previous month.

Exports in November registered a 11.13% increase over the same month of the previous financial year. Export of motorcycle tyres registered an increase of 82% in November, while 85% decline was registered in the case of scooter segment.

In the case of production, the cumulative figure for April-November period was up 7% at 82.8 million tyres, compared to 77.3 million in the same period of 2010-11

- **Nokia ties up with India times Shopping, launches Nokia Shop**

Handset major Nokia has tied up with India times Shopping to launch its first online store in India. India times piped ten other online portals to bag the deal to become Nokia's official online partner. The online store called Nokia Shop (nokia.indiatimes.com) will be the first portal in the country to deliver phones directly from the manufacturer to users. This marks the latest in a series of steps, including unveiling its largest ever marketing campaign in the country that the Finnish handset major is taking as it goes all-out to promote its Windows range of smart phones. Currently, online buying accounts for less than 1% of the handset sales in India.

- **12th Plan to see Rs 1,000 billion rise in private investment**

The road transport ministry plans to more than double private participation in highway construction during the 12th Five Year Plan starting April 2012. The overall investment in the sector will also double to Rs 3,230 billion, but the share of private sector is expected to increase by 10% points.

The working group for the Twelfth Plan has recommended the government to increase private investment in the road sector to Rs 1,667.38 billion from Rs 626.3 billion in the ongoing 11th five year plan. This projected increase in private investment will raise the percentage of private-sector contribution in the highway sector to 51% from the present 41%. The expenditure in road sector in the 12th Plan will double from Rs 1,522 billion to Rs 3,230 billion.

- **Essar Projects to commission Ro Ro facility to connect Saurasthra with south Gujarat:-**

ESSAR

The state government kicked off the commissioning of Ro Ro facility between Gogha in Saurashtra and Dahej in South Gujarat. The state authority Gujarat Maritime Board (GMB) awarded contract to build the Ro-Ro Ferry Service to Essar Projects. The project is scheduled to be completed in 15 months and will cost Rs 2.25 billion. Proposed Ro-Ro Ferry Service will reduce distance between Gogha & Dahej by 360 km land-route to a 31km sea-route. The government of Gujarat and Essar Project are claiming that the project will reduce 80% distance besides saving in fuel costs and travel-time. In order to develop this service, the government of Gujarat has constituted a "Gujarat Coastal Area Development Board (GCADB). This project, initiated by the GMB, is part of the government of Gujarat's effort to develop a 1,600-km coastline as a means to develop trade and transport between Southern Gujarat and Kutch.

- **NRI venture to invest Rs 5 billion in Kerala**

The Dubai-based Fathima Healthcare Group has launched a new venture, NRI Project Management India Ltd (NRI-PMI), and has drawn up plans to invest around Rs 5 billion in various projects here in the first phase. The projects include a world trade centre, convention centers, star hotels, supermarkets and amusement parks. The new venture will mainly focus on the welfare of the non-resident Indians (NRIs) and their families. The company will identify suitable projects in other States in India as well for making investments and NRIs will be given preference in employment according to their skills or through proper training at NRI-PMI-funded projects.

Statuary compliance calendar for the month of January 2012			
Due date	**Statuary compliance under Act**	**particulars**	**Governing authority**
			
06/01/2012	Service Tax	Payment of monthly service tax for the month of December by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of December on goods by assesses other than SSI units and quarterly payment of excise by SSI electronically	Central Board of Excise and Custom
07/01/2012	Income Tax	Deposit of Income Tax TCS and TDS deducted in December	Central Board of Direct Tax.
	SEBI	Quarterly report for grievances of beneficial owners related to depository services to depositories	The securities and exchange board of India Act-1992
	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.
	SEBI	Quarterly certificate on demat/remit shares to depositories	The securities and exchange board of India Act-1992
10/01/2012	Central Excise	(a) Monthly central excise return in form ER-1/ER-2 by other that SSI. (b) Quarterly return by SSI in form ER-3 (c) Quarterly return by assesses paying 1%/2% excise duty and not manufacturing any other goods in form ER-8.	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.

	NBFC-D	Quarterly submission of Monetary and Supervisory return in form NBS-5 by NBFC having public deposits of ` 20 crore and above as per last audited balance sheet	Reserve Bank of India.
15/01/2012	Income Tax	(a) Quarterly Income Tax TDS/TCS statement in form 24Q/26Q/27EQ (Other than Government) (b) Quarterly return in form 27Q in respect of TDS from interest, dividend or any other sum payable to non-residents	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of December (b) Monthly return in form 5 for employees joining Provident Fund during December 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 December	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
	SEBI	Quarterly Corporate Governance Compliance Certificate by listed companies to stock exchanges under clause 49(VI) (ii) of Listing Agreement.	The securities and exchange board of India Act-1992
	Central Excise – Dealers	First stage dealer and second stage dealer to submit quarterly return	Central Board of Excise and Custom
	NBFC-D	(a) Quarterly Return of Statutory Liquid Assets in form NBS-3 by NBFC (NBS-3A by RNBFC) only if they are accepting public deposits (b) Quarterly report of frauds involving ` one lakh or more in form FMR-3 and frauds outstanding in form FMR-2.	Reserve Bank of India.
21/01/2012	SEBI	Payment of ESIC contribution for the month of December	The securities and exchange board of India Act-1992
	ESIC	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The employees' state insurance Act-1948. Ministry of labour and employment.
25/01/2012	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

BUSINESS ADVISORY

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

AUDIT & ASSURANCE

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

RBI, FEMA, SEBI Services

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

TAXATION SERVICES

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

OUTSOURCING ACCOUNTANTS

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

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