

Tax & Corporate law Bulletin

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MAY 2014

From the Editor's Desk...

Dear Reader,

Greetings for the season,

With the wishes of Peace and Joy we are glad to put this edition for our reader on the significant updates as ... Direct to Account Facility, Amendment of Schedule II of Companies Act, 2013, Government plans special purpose vehicle for 'Brand India Pharma' promotion, and read many more...

We eagerly await your feedback on the bulletin.

Yours truly,

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DIRECT TAX

- **Section 10(2a) of the Income-tax Act, 1961 – Share of profits to partner of firm – Clarification on interpretation of provisions of section 10(2a) in cases where income of firm is exempt.**

Circular No. 8/2014 [F.No. 173/99/2013-ITA-I]

A reference has been received in the Board in connection with the interpretation of provisions of section 10(2A) of the Income tax Act, 1961 ('Act') seeking clarification as to what will be the amount exempt in the hands of the partners of a partnership firm in cases where the firm has claimed exemption/deduction under Chapter III or VIA of the Act.

The matter has been examined. Sub-section (2A) of section 10 was inserted by the Finance Act, 1992 w.e.f. April 1, 1993 due to a change in the scheme of taxation of partnership firms. Since assessment year 1993-94, a firm is assessed as such and is liable to pay tax on its total income. A partner is not liable to tax once again on his share in the said total income. It is clarified that 'total income' of the firm for sub-section (2A) of section 10 of the Act, as interpreted contextually, includes income which is exempt or deductible under various provisions of the Act.

It is, therefore, further clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Accordingly, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction as per the provisions of the Act.

- **Income-tax (Fourth Amendment) Rules, 2014 – Amendment in rule 12 & substitution of Forms Sahaj (ITR-1), ITR-2, Sugam (ITR-4S)**

Notification No. 24/2014 [F.No.14 February 2nd, 2014-TPL]/so 997(e), dated April 1st, 2014

The above forms have been notified for Assessment Year 2014-15.

RECENT JUDGEMENT

- **No disallowance u/s 14A & Rule 8D can be made if the assessee does not have tax-free income & no claim for exemption is made**

Sub-section (1) of s. 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the present case, the Tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the Tribunal held that disallowance u/s 14A of the Act could not be made. The Tribunal relied on the decision of the P&H High Court in case of CIT vs. Winsome Textile Industries Ltd 319 ITR 204 (P&H) where it was held that s. 14A could have no application to a case where the assessee did not make any claim for exemption. We do not find any question of law arising, Tax Appeal is therefore dismissed.

CIT vs. Cortech Energy Pvt. Ltd (Gujarat High Court) May 24th, 2014

- **Section 147: Strict guidelines laid down to streamline procedure for reopening of assessments**

It can thus be seen that there are four important stages once the AO issues notice for reopening of the assessment. Such stages are: (i) the assessee if he so wishes, may demand the reasons recorded by the AO after filing return in response to notice u/s 148 of the Act, (ii) the AO supplying such reasons to the assessee, (iii) the assessee raising objections to the notice for reopening and (iv) the AO disposing of the objections raised by the assessee. With a view to

streamlining this procedure, and to ensure, as far as possible, the AO is not faced with the unenviable task of completing the assessment proceedings in a few days left before the same became time barred, we would like to give certain directions of general implication which, we would expect, are followed by all concerned.

While doing so, we are conscious that these stages are provided by the Supreme Court in GKN Driveshafts (India) Ltd 259 ITR 19 and we would be giving directions only to the extent the said judgment already does not provide for. We have noticed that considerably long time is consumed sometimes by the assessee demanding the reasons recorded by the Assessing Officer and sometimes the AO complying with such a request of the assessee.

It is an accepted proposition that the reasons recorded by the AO are not confidential and the assessee whose assessment is being reopened has a right to know such reasons. We therefore thought that these two stages can be substantially eliminated by giving suitable directions. The further stage is of the assessee raising objections which often times is done after much delay and the last stage comes where the AO deals with such objections. This is yet another problem area where unduly long time is consumed by the AO.

Sahkari Khand Udyog Mandal Ltd vs. ACIT (Gujarat High Court) May 23rd, 2014

INDIRECT TAX

CENTRAL EXCISE

- **Notification No. 07/2014-Central Excise: dated June 30th, 2014**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods

of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 50/2003-Central Excise, dated the 10th June, 2003, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 472(E), dated the 10th June, 2003, namely:-

In the said notification, in Annexure II, under heading "1. State of Uttarakhand", under sub-heading "(11) District –Udham Singh Nagar", in Category (C), under Table heading "Existing Industrial Activity in Non Industrial Area", in the Table,-

- Against S. No. 28, in column (3), for the entry "Sakharkheda", the entry "Sarverkheda" shall be substituted;
- Against S.No. 28, in the entries in column (4), for the figures and letters "285A" and "288 A" the figures and symbols "285/1" and "288/1" shall respectively be substituted.

RECENT JUDGEMENTS

- **No liability to pay service tax again if assessee has deposited the service tax under wrong accounting code**

There is an important judgment of the Hon'ble CESTAT, Mumbai in the case of Arcadia Share & Stock Brokers Pvt. Ltd. Versus Commissioner of Central Excise & Customs, Goa [2013 (7) TMI 330 - CESTAT MUMBAI] on following issue:

Whether the assessee is required to pay service tax again if he has deposited service tax under the wrong accounting code?

Facts & Background

M/s Arcadia Share & Stock Brokers Pvt. Ltd. (the Appellant) was engaged in rendering stock

broker services. However, the Appellant discharged service tax liability under the wrong accounting code i.e. service tax was remitted under the accounting code for education cess. The Department confirmed demand against the Appellant for non-payment of service tax under proper accounting code. The Appellant appealed against the order of the Department before the lower appellate authority who rejected the appeal and hence the Appellant appealed before the Hon'ble CESTAT.

Held

It was held by the Hon'ble CESTAT that the Appellant is not required to pay service tax again in as much as they have paid service tax to the Government albeit under the wrong accounting code. The Hon'ble CESTAT relied on the Board's clarification in Circular No.5 July 8, 2003-CX (ST) dated May 20, 2003 (the Circular). The Board has clarified in the Circular that an assessee shall not be asked to pay service tax again if he has paid service tax under a wrong accounting code.

Further, similar decision was made by the Hon'ble Delhi Tribunal in the case of PepsiCo India Holding Pvt. Ltd. vs. Commissioner of Central Excise, Allahabad 2010 (255) ELT 299 (Tri-Del) wherein it was held on basis of the Circular that the assessee is not liable to pay service tax again if he has discharged the service tax liability even though under a wrong accounting code. Therefore, relying on the Circular and the above judgment, the Hon'ble Mumbai Tribunal rejected the contention of the authorities and decided the case in favour of the Appellant.

➤ **VAT not leviable on the portion which attracts service tax; NO VAT on ST portion of Restaurant bill**

An Analysis of Land mark Judgment of Uttarakhand High Court in case of M/s Valley Hotels & Resorts vs. the Commissioner, Commercial Tax, Dehradun which addressed crucial issue of double taxation. According to the judgment, it was held that, where element of service has been so declared and brought

under the Service Tax vide Government of India notification dated June 6th, 2012, (i.e. 40% of bill amount to the customers having food or beverage in the restaurant was made liable to service tax) no Value Added Tax can be imposed thereon.

➤ **Business Auxiliary Service**

The assessee sold meal/gift coupon vouchers to its customers who could use them to purchase goods or services at specified business establishments (restaurants, shops, etc.). When the customers present the vouchers / coupons at the establishments it is accepted as a payment towards goods or services purchased by them. The establishment in turn presents the coupon to the assessee who after deducting certain amount as their service charge makes payment for the face value of the voucher to the establishments.

The Revenue had sought to tax the service charges retained by the assessee under the category of 'Business Auxiliary services' on the ground that the assessee promoted the goods or services of the business establishment. The Tribunal held that since the user cannot approach any other business establishment other than the specified ones to purchase goods or services against the voucher, the assessee definitely helps in promoting sale of goods and services of the establishment and accordingly is liable for service tax on the service charges under the category of Business Auxiliary Service.

[Sodexo Pass Services India P. Ltd vs. CST, 2014(33) STR 561 (Tri.-Mum.)

➤ **Commercial Coaching or Training Service**

Where the appellant conducted a two-year course titled 'post-graduate diploma in management' which was essentially theory oriented and academic in nature covering a broad spectrum of subjects as economics, business communication, psychology and organizational behavior, etc., the Tribunal held that the appellant did not provide any vocational training that imparted skills to seek employment or undertake self-employment after such training and hence was

not entitled to exemption under Notification No.24/2004-ST dated September 10, 2004 (for vocational training institutes).

[**Sadhana Educational & People Dev Services Ltd vs. CCE, 2014(33) STR 575 (Tri.-Mum.)**].

➤ **Construction Service**

Notification No.15/2004 dated September 10, 2004 allowed 67% abatement on construction services subject inter alia to the condition that no CENVAT credit on inputs and capital goods are taken. This notification which was in effect up to February 28, 2006 was rescinded by Notification No.1/2006 dated March 1, 2006 which allowed abatement of 67% but subject to an additional condition that no CENVAT credit on input services is taken. Where the assessee in respect of a single construction contract claimed benefit of abatement up to February 28, 2006 and the benefit of CENVAT credit with effect from March 1, 2006 (without claiming abatement), it was held that in absence of any restriction that the benefit under Notification No.15/2004 dated September 10, 2004 has to be availed during the entire currency of the contract, the assessee's stand was correct.

[**CCE vs. Prasad & Company 2014 (33) STR 665 (Tri.-Delhi)**].

➤ **Goods Transport Agency Services**

Where the appellant claimed refund of tax paid by them on goods transport agency services availed from private trucks owners/operators on the ground that the private trucks owners/operators did not issue consignment notes to them, it was held that:-

- The refund is not admissible since the appellant would still be liable to pay service tax though the provider has defaulted on issuance of a consignment note.
- However the contention of the revenue that the appellant should have challenged its own assessment before filing the refund claim is expecting the impossible since a person cannot challenge his own assessment and a question

may arise before whom it may be challenged. Hence this ground of rejection of refund was held unsustainable.

[**Coromandel Agro Products & Oils Ltd. vs. CCE 2014 (33) STR 660 (Tri.-Bang.)**].

➤ **Maintenance and Repair Services**

'Runways' (i.e. a strip of land over which aircrafts land or take off) was held not to be 'road' (which is a path or a way between two different places) and therefore maintenance or repair of runways was held to be liable for service tax under the category of Management, Maintenance and Repair services since the exemption in respect of Management, Maintenance and Repair services of roads will not be applicable in the case of runways.

[**D. P. Jain & Co. Infrastructure Pvt. Ltd. v. CCE 2014(33) STR 668 (Tri.-Mumbai)**].

➤ **Management Consultancy Service vs. Business Auxiliary Service**

Where the assessee provided advice relating to the financial restructuring relating to business of various clients it was held that its services would be liable for service tax under the category of 'Management Consultancy services' prior to July 16, 2001 even though the said services may be liable for service tax under the category of "Banking and Other Financial Services" post July 16, 2001.

[**HSBC Securities & Capital Markets (I) P. Ltd. vs. CST, 2014 (33) STR 530 (Tri.-Mum.)**].

➤ **Storage and Warehousing Service**

Relying on CCE vs. Nahar Industrial Enterprises Ltd. (2010) 19 STR 166 (P & H), the Tribunal held that subsidy received from the Government towards interest, storage and insurance for maintenance of a specific quantity of free sale sugar for a specified period (buffer stock) under the provisions of Sugar Development Fund Act, 1982 is not liable under the 'storage and warehousing services'. The High Court had in the above case reasoned that:-

- Nobody can provide service to himself – the appellant stored the goods owned by himself for a specified period and after the expiry of the period he was free to sell the same;
- Subsidy received was not on account of services rendered to Government but is received as compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock.
- Just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the sugar mills becomes ‘Storage and Warehouse Keeper’ nor the Government of India becomes their client in this regard. Following the above High Court decision the Tribunal in this case dismissed the department’s appeal. [CCE vs. **Kumbhi Kasari SSK Ltd., 2014(33) STR 539 (Tri.-Mum.)**] Where the appellant had provided shipping vessels to its client on charter hire basis which were used as a temporary storage and the primary object was transportation of crude oil from the place of production

In other words in the High Seas to the refineries in India, it was held that the appellant’s services were not liable for service tax under the category of “Storage and Warehousing services’ especially since the appellant did not provide security, stacking, loading or unloading of the goods in the storage area.

➤ Exports

Where the assessee provided advertising agency services to the Foreign Service recipients for advertisements displayed in India during the period March 1, 2003–November 19, 2003, it was held that the assessee is liable to pay service tax in absence of any exemption notification during the said period.

[**J. Walter Thompson vs. CCE, 2014(33) STR 525 (Tri.-Mum.)**].

➤ Valuation

Reimbursement of out-of-pocket expenses incurred by advertising agency is includible in the value of taxable services. The appellants were however granted cum-tax benefit.

[**J. Walter Thompson vs. CCE, 2014(33) STR 525 (Tri.-Mum.)**].

➤ Service Tax Audit

The petitioners filed a writ challenging the vires of Rule of 5A (2) of the Service Tax Rules, 1994 as being inconsistent with section 72A of the Finance Act, 1994, in as much as - it empowered the central excise officers to call for an audit the records of the assessee; the impugned rule is totally arbitrary and without specifying the period for conducting the special audit; qualification and manner in which audit will be conducted has not been defined anywhere;

There is no provision to provide the audit report to the assessee; and the audit manual, 2011 is exclusively meant for the departmental use, but, petitioner-assessee was asked to fill up certain forms. The department’s counsel argued that the audit will not be done by any officer or on his behalf. The audit will be performed by a qualified Chartered Accountant. So, the reference to the Audit Manual, 2011 for the Department is valid. Asking the petitioner-assessee for filing up certain forms, is just to facilitate the audit, which is to be carried out, as per law.

Further during the course of arguments, learned Additional Solicitor General of India also assured that the audit will be performed by a qualified Chartered Accountant and as per accounting standard and after the audit, the assessee will get the copy of the audit report, as per law. Based on the above arguments, the High Court dismissed the writ holding that: Under Section 72A, in certain situations, the Commissioner may appoint a Chartered Accountant or Cost & Works Accountant to audit the records of the assessee and the audit report would be submitted to the said Commissioner. A copy of the Audit Report may also be made available to the assessee and a proper opportunity of being heard may be

given to the assessee, if the material gathered in the audit is proposed to be used in any proceeding against the assessee. Under Rule 5A(2) of Service Tax Rules, 1994 the audit will be performed only by a Chartered Accountant in case of a private assessee or in the case of government autonomous body, it would be conducted by the Comptroller and Auditor General of India. However, the material for the purpose of the audit can be collected either by the officer authorized by the Commissioner or by the auditor himself. (Hence even under this rule the audit would not be performed by the Commissioner). Hence there is no inconsistency in Rule 5A (2) and Section 72A.

[A.C.L. Education Centre (P) Ltd. vs. Union of India 2014 (33) STR 609 (All.).]

➤ Refund

Where the assessee had paid service tax on interest on loans (non-taxable services) and filed a refund claim after 1 year from the date of payment, the High Court held that refund is not admissible since the claim is to be filed within time limit prescribed u/s. 11B of Central Excise Act, 1944 i.e. 1 year from the date of payment considering that the tax was paid under the Chapter V of the Finance Act, 1994 ("Act") and not outside the Act so as to be treated as refund under the General Law.

[M.C.I Leasing (P) Ltd. vs. CCE, 2014(33) STR 497 (Kar.) differentiating CCE vs. KVR Construction 2012(26) STR 195 (Kar.)]

FEMA

➤ Advance remittance for import of rough diamonds. A.P. (DIR Series) Circular No. 116 dated April 1st, 2014

With a view to further liberalize the procedure for facilitating the import of rough diamonds, RBI has now decided that henceforth RBI will not notify the names of overseas mining companies from whom an importer (other than a Public Sector Company (PSC) or a Department/Undertaking of the Government of India (GOI)/State Government) may import rough

diamonds into India, by way of advance payments, without any limit / bank guarantee/stand-by letter of Credit. Currently 9 such name overseas mining companies have been notified by RBI.

AD category-I banks are, henceforth, permitted to take decision on overseas mining companies to whom an importer (other than PSC or Department/Undertaking of GOI/State Government) can make advance payments, without any limit/bank guarantee/stand-by letter of Credit. AD Category-I banks are required to submit a report of all such advance remittances made without a bank guarantee or standby letter of credit, where the amount of advance payment is equivalent to or exceeds USD5,000,000/- to the concerned Regional Office of RBI, in the specified format, within 15 calendar days of the close of each half year.

➤ **Compounding of contraventions under FEMA, 1999 A.P. (DIR Series) Circular No. 117 dated April 4th, 2014**

RBI has decided to delegate further powers to the Regional Offices of RBI to compound the contraventions of FEMA. Accordingly, the powers to compound the following contraventions shall now be vested with the Regional Offices:-

- Delay in reporting inward remittance received for issue of shares.
- Delay in filing form FC-GPR after issue of shares.
- Delay in issue of shares/ refund of share application money beyond 180 days, mode of receipt of funds, etc.
- Violation of pricing guidelines for issue of shares.
- Issue of ineligible instruments such as non-convertible debentures, paid shares, shares with optionality clause, etc.
- Issue of shares without approval of RBI or FIPB respectively, where required.

➤ **Foreign Direct Investment (FDI) Foreign investment in India in Government Securities A.P. (DIR Series) Circular No. 118 dated April 7th, 2014**

The present limit for investment in Government Securities by SEBI registered FIIs, QFIs, long-term investors and FPIs registered in accordance with SEBI guidelines stands at USD 30 billion. On a review, to encourage longer term flow, RBI has now decided that foreign investment by all eligible investors i.e. RFPIs (including existing and QFIs) and Long-term investors registered with SEBI SWFs Multilateral Agencies, Pension/ Insurance /Endowment Funds and foreign Central Banks, shall henceforth be permitted only in Government dated securities having residual maturity of 1 year and above. Existing investment in T-bills and Government dated securities of less than 1 year residual maturity shall be allowed to taper off on maturity/sale and no fresh investment in T-bills and Government dated securities of less than 1 year residual maturity is allowed.

➤ **Clarifications on FDI in pharmaceuticals sector Notification No. FEMA 296/2014-RB dated March 3, 2014 and A.P. (DIR Series) Circular No. 124 dated April 21st, 2014**

The Department of Industrial Policy and Promotion (DIPP) had, vide Press Note No. 1 (2014 Series) dated January 8th, 2014, reviewed paragraph 6.2.18 of the Consolidated FDI policy relating to pharmaceuticals sector and had that the existing policy would continue with the condition that 'non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board (FIPB) of the Government of India (GOI). Consequently, RBI has amended Schedule 1 of Notification No. FEMA20/2000-RB incorporating the above mentioned change in the existing entry 25 of 'Annexure B' of Schedule 1 vide Notification No. FEMA.296/2014-RB dated March 3rd, 2014.

➤ **FDI in Limited Liability Partnership (LLP) Notification No. FEMA 298/2014-RB dated March 13, 2014 and A.P.(DIR Series) Circular No. 123 dated April 16th, 2014**



RBI has notified the guidelines in relation to FDI in LLP. These guidelines were long overdue since FDI in LLP was permitted vide Press Note 1 o2011 Series by DIPP but there was no corresponding reference in the Foreign Exchange Management Act (FEMA). As per the new guidelines, any person resident outside India or an entity incorporated outside India, (other than a person or entity of Pakistan or Bangladesh), not being a registered FII or Foreign Venture Capital SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition/transfer of profit shares in the capital structure of an LLP under FDI, subject to the following terms and conditions:-

- The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.
- Any form of foreign investment in a LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval.
- FDI in a LLP either by way of capital contribution or by way of acquisition/transfer of profit shares, would have to be more than or to the fair price as worked out with any valuation norm which is accepted/adopted as per market

practice and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

- Payment by an eligible investor towards capital contribution of LLPs will be allowed only by way of cash consideration to be received by way of inward remittance through normal banking channels; or by debit to NRE/FCNR(B) account of the person concerned, maintained with an AD Category-I bank
- LLPs shall report to the Regional Office concerned of the RBI, the details of the receipt of the amount of consideration for capital contribution and 'profit shares' in Form Foreign Direct Investment-LLP(I) as specified by RBI from time to time, together with a copies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor, through an AD Category-I bank, and valuation certificate as regards pricing within 30 days from the date of receipt of the consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.
- Disinvestment /transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall be required to be reported within 60 days from the date of receipt of funds in Form Foreign Direct Investment-LLP(II) as specified by RBI from time to time.
- In case an LLP with FDI has a body corporate as a designated partner or nominates an individual to act as a designated partner, such a body corporate should only be a company registered in India and not any other body, such as an LLP or a Trust and would have to satisfy the definition of "person resident in India", as prescribed under section 2(v) (i) of the FEMA,

1999. The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

- Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.
- LLPs shall not be permitted to avail External Commercial Borrowings (ECBs) May 2014.
- An LLP, existing or new, operating in sectors/activities where 100% FDI's allowed under the automatic route of FDI Scheme would be eligible to receive FDI.

An LLP engaged in following sectors/activities shall not be eligible to accept (FDI):-

- a) Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions;
- b) Sectors eligible to accept less than 100% FDI under automatic route or accept FDI under Government Approval route;
- c) Agricultural/plantation activity and print media;
- d) Sectors ineligible to accept FDI i.e. any sector which is prohibited under extant FDI policy.

➤ **Amendments in the Consolidated Policy Consolidated FDI Policy Circular 1 of 2014 dated April 17th, 2014 issued by DIPP and Ministry of Commerce and Industry of the GOI**

The GOI has, vide Circular 1 of 2014 series issued the Consolidated FDI Policy incorporating the changes made over the last year, which shall come into force with immediate effect. The changes made in the aforesaid Policy vis-à-vis the previous Policy issued by the GOI on April 5th, 2013 are outlined below:-

- The definition of the term 'Control' has undergone a change to now not only include the power to appoint a majority of directors, but also the ability to control the management or policy decisions by virtue of shareholding, management rights, shareholder agreements, or voting agreements.
- FDIs in case of Commodity Exchanges, Power Exchanges, Courier services, Test Marketing and Petrol Refining by Public Sector Undertakings have been brought under the Automatic routes which were earlier under the Government Approval route subject to their respective FDI caps. Also, henceforth FDI in Commodity Exchanges shall be subject to the guidelines of the Central Government/ Forward Markets Commission from time to time.
- FDI & FII in Asset Reconstruction was earlier allowed up to only 74% under the Government route. Now, it is allowed under the Automatic route up to 49% and beyond 49% up to 100% under the Government route.
- FDI in Telecom services sector is now allowed up to 100% which was earlier restricted only to 74% under the Government route.
- In case of Defence Production, FDI up to 26% is now allowed under the Automatic route and beyond 26% it is allowed under the Government route.
- FDI under Automatic route in Insurance sector is now allowed to cover Insurance Company, Insurance Broker, Third Party Administrators and Surveyors and Loss Assessors up to 26% which would include FDI, FII and NRI investment subject to certain conditions specified therein.
- FDI in case of Single Brand retail trading is now allowed under the Automatic route up to 49% and under the Government route beyond 49%. Also, while previous FDI policy only permitted 1 non-resident entity with ownership of a brand (or rights to a brand) to invest in Indian companies engaged in the retail trading of that

brand, policy changes now allow multiple non-resident entities, whether owner of the brand or otherwise, to invest in Indian entities, either directly or through a legally tenable agreement.

- With respect to Multi Brand Retail Trading, it has now been clarified that at least 50 per cent of the first US \$ 100 million invested must be in 'back end infrastructure.

➤ **Rupee Drawing Arrangement – 'Direct to Account' Facility A.P. (DIR Series) Circular No. 120 dated April 10th, 2014**

In order to facilitate receipt of foreign inward remittances directly into bank accounts of the beneficiaries, RBI has decided to allow foreign inward remittances received under Rupee Drawing Arrangement (RDA) to be transferred to the KYC compliant beneficiary bank accounts through electronic mode, such as, NEFT, IMPS, etc. The procedure to be followed for the purpose can be referred in the said circular available on RBI website.

➤ **External Commercial Borrowings (ECB) ECB Policy – Review of all-in-cost ceiling A.P. (DIR Series) Circular No. 121 dated April 10th, 2014**

All-in-cost ceiling as specified in A.P. (DIR Series) Circular No. 99 dated March 20, 2012 relating to ECB shall continue to be applicable till June 30th, 2014 until further review. All other aspects of ECB policy remain unchanged.

➤ **Trade Credits for Imports into India – Review of all-in-cost ceiling A.P. (DIR Series) Circular No. 122 dated April 10th, 2014**

The all-in-cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No. 28 dated September 11, 2012 shall continue to be applicable till June 30th, 2014 and is subject to review thereafter. All other aspects of Trade Credit policy shall remain unchanged.

CORPORATE LAWS

- **MCA General Circular No. 8/2014 dated April 4th, 2014 – Commencement of provisions of Companies Act, 2013 w.r.t maintenance of books of accounts, etc.**

A number of provisions of the Companies Act, 2013 including those relating to maintenance of books of account, preparation, adoption & filing of financial statements (and documents required to be attached thereto), Auditors reports and the Board of Directors report (Board's report) have been brought into force with effect from 1st April, 2014. MCA had received numerous requests for clarification w.r.t the financial year from which these provisions will be effective. The MCA has clarified that the financial statements (and documents required to be attached thereto), auditor's report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply. Therefore for the financial statements of F.Y. 2013-14 or calendar year 2014, the provisions of Companies Act 1956 will continue to apply.

- **Availability of E-forms on MCA portal and Table of fees for various forms to be filed with ROC**

MCA has clarified that instead of staggered roll out of e-forms as notified earlier; there would be a single roll out for all e-forms. Accordingly, it is clarified that all E-forms will be available for upload with effect from April 28th, 2014. A schedule showing the mapping of e-forms under Companies Act, 2013 with the corresponding e-forms under Companies Act, 1956 is also provided.

MCA has also released a schedule of fees applicable for filing of various forms with the ROC pursuant to Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014.

- **Amendment of Schedule II of Companies Act, 2013**

The MCA has amended Schedule II of the Companies Act, 2013 dealing with rates of depreciation. The amendment relates to rates of depreciation in respect of intangible assets (Toll Roads) created under Build, Own, Operate, Transfer or any other form of public private partnership route in case of toll roads. The actual amendment and the detailed methodology of amortization can be referred on the MCA website.

- **SEBI Circular No. – CIR/CFD/POLICY CELL/2/2014 dated April 17th, 2014 – Corporate Governance in listed entities – Amendments to Clauses 35B and 49 of the Equity Listing Agreement**

The Companies Act, 2013 was enacted on August 30th, 2013 which provides for a major overhaul in the Corporate Governance norms for all companies. The rules pertaining to Corporate Governance were notified on March 27, 2014. In light of the stricter provisions of the Companies Act, 2013, SEBI has decided to review the provisions of the Listing Agreement in this regard with the objectives to align with the provisions of the Companies Act, 2013, adopt best practices on corporate governance and to make the corporate governance framework more effective.

- **SEBI Circular No. – CIR/IMD/FIIC/09/2014 dated April 28th, 2014– Infrastructure facilities and submission of periodic reports by Designated Depository Participants (DDP)**

SEBI has advised that in order to ensure proper functioning of the Foreign Portfolio Investor regime, it is imperative that DDPs should have adequate infrastructure facilities and appropriate systems and controls in place. Accordingly certain instructions have been issued to DDPs *vide* the aforesaid circular.

INDIAN ECONOMY AT A GLANCE

➤ **Government plans special purpose vehicle for 'Brand India Pharma' promotion**

The government will create a special entity for a 'Brand India Pharma' campaign aimed at refurbishing the image of drug exporters overseas. The special purpose vehicle will come into being within the next few weeks. The government is also considering stern action against copycat medicine producers who make substandard and spurious drugs. Growth rate of India's pharmaceutical exports slowed sharply in 2013-14 to just 1.2%. The near stagnation in growth is because of import alerts and bans by US regulators, a slowdown in the European Union and increased competition.

➤ **Private banks make good profit on unsecured loans in 2014**

Private sector lenders witnessed robust growth in credit cards and personal loan businesses in 2014. This has helped them boost top line amid sluggish corporate credit demand in a slowing economy. ICICI Bank, India's largest private sector lender, witnessed 141.6% growth in personal loan disbursement in the past financial year. Axis Bank's personal loan business grew 49.8% last year, while the credit card business expanded 31.1%. HDFC Bank, the largest player in the credit card business, saw the credit card business expanding 21% and the personal loans by 17% in the last quarter of 2014.

➤ **India's FDI inflows up 12% at USD 2 billion in February**



Foreign Direct Investment (FDI) into India grew for the second consecutive month in February this year to USD 2.01 billion, up 12.29%. In February 2013 the FDI was at USD 1.79 billion. However, for the

April-February period of last fiscal, FDI inflows dipped 0.6% to USD 20.76 billion, from USD 20.89 billion during the first 11 months of 2012-13. The highest FDI came in services, followed by automobiles, pharmaceuticals and construction development in the 11 months of 2013-14. Mauritius led the inflows into India, followed by Singapore, UK and the Netherlands.

POLICY WATCH

➤ **Government to exceed revised direct tax revenue target by USD 0.83 billion in 2013-14**

The government is likely to exceed the revised direct tax revenue target by about USD 0.83 billion in 2013-14. As per the revised target, the government proposed to collect USD 106.60 billion during 2013-14, compared with the previous, budget estimate at USD 112.93 billion. Corporate advance tax collection as on March 22, 2014 grew by 10.8% in 2013-14 to USD 40.57 billion. Personal advance tax grew by 11.2% to USD 7.69 billion in the same period. Higher revenue from direct Taxes will help cut the government's fiscal deficit.

➤ **Environment ministry gets EC approves on green clearances**

The Election Commission (EC) has allowed the Ministry of Environment and Forests (MoEF) to issue orders in cases where clearances were accorded before the model code of conduct came into being on March 5th, 2014. The MoEF had received the go ahead signal from the EC and the process to issue orders that has begun.



There are over 50 projects, which are held up for orders and could not be issued as the model code of conduct came into effect.

➤ **Shipping ministry to launch new projects worth USD 2.27 billion**

The shipping ministry has drawn up another ambitious target to award over 35 ventures worth over USD 2.27 billion and plans to add about 259 million tonnes capacity this year. The ministry will shift its focus from capacity augmentation projects like in the past to port infrastructure and connectivity projects. About 23 projects worth USD 0.86 billion will be taken up on a priority basis while the rest have been marked as standby projects.

➤ **RBI eases norms for overseas investors buying government bonds**

The Reserve Bank of India has eased norms for overseas investors buying government bonds, allowing them to invest directly in secondary market debt instruments. Investor appetite for Indian securities has been running high. Foreign portfolio investors have almost exhausted their limit for investing in India. Last week, Franklin Templeton invested a record about Rs 16,000 crore in government bonds. All offshore investors, including residents outside India, qualified foreign investors, foreign portfolio investors and long-term investors like sovereign funds could buy government securities directly from the issuer of securities or SEBI registered stock brokers.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

➤ **Exim Bank to focus more on assisting project exports**

Export-Import Bank of India (Exim Bank) will have increased focus on supporting project exports from India to Africa, South Asia and Latin America. With commercial banks establishing themselves in international trade finance segments such as letters of credit and pre- and post-shipment credit, Exim Bank has moved up the value chain by extending financial assistance to project exports so that the country earns foreign exchange. The projects executed by Indian

companies' overseas involving activities such as engineering, procurement, construction (civil, mechanical, electrical or instrumental) are classified as project exports.

In 2012-13, the Bank had supported 85 project export contracts (USD 4.02 billion) secured by 47 companies in 23 countries. India's cement demand to touch 550-600 million tonnes per annum by 2025 INDIA'S cement demand is expected to reach 550-600 million tonnes per annum (mtpa) by 2025, mainly on account of rising infrastructure and housing needs propelled by rapid urbanization.

The per capita cement consumption is likely to increase from 185 kg currently to 385 to 415 kg in 2015. This growth will likely be led by investments in the infrastructure sector, with sub-sectors such as roads, power and irrigation leading the charge. An additional capacity of 330 to 380 MTPA for cement and 240 to 270 MTPA for clinker could be required by 2025, translating to an investment of close to USD 49.82 billion.

➤ **India relaxes value addition norms for exports to Iran**

India has waived the value addition norms for exporters shipping imported items like food and pharmaceuticals to Iran. This will help in increasing the bilateral trade. Re-export of food, medicine and medical equipment to Iran will not be subject to any value addition requirement. Earlier, 15% value addition was mandatory for re-export to Iran. As per Directorate General of Foreign Trade (DGFT) the goods imported for such re-export to Iran against rupee payment shall not be eligible for any export incentive. India's export to Iran has increased by 60% to USD 4.56 billion in April-February 2014. Besides food products, India mainly export to Iran include pharmaceuticals, machinery, transport equipment, chemicals, man-made yarns and fabrics, steel.



➤ **New foreign trade policy to focus on ways to boost exports**

The new Foreign Trade Policy will focus on ways to boost India's exports and reduce dependence on imports. Therefore, the focus of the new policy would be to vigorously promote both exports and imports with significantly substantial focus on exports. The old procedures and regulations governing exporters will be reduced to suit the current export requirements so that the realistic targets are made achievable. India's overall exports fell short of the USD 325 billion target in 2013-14 and were USD 312.3 billion.

➤ **GE Energy invests USD 24 million in Welspun's solar project**

GE Energy Financial Services has made its first investment in a solar power plant in India and is investing USD 24 million. This investment will go into a 151-megawatt solar photovoltaic power project that Welspun Renewable Energy Pvt. Ltd (WREPL) had put into operation in August last year in Neemuch in Madhya Pradesh. This is one of the world's largest solar plants providing power 624,000 homes. WREPL's project has reached a capacity utilization factor of 26%. Power from the project is sold to the Madhya Pradesh state utility.

➤ **IRB bags USD 0.53 billion toll road order**

IRB Infrastructure Developers has received 'letter of award' from the National Highways Authority for four laning the Yedeshi-Aurangabad section of NH-211 in Maharashtra totaling about 190 km. The estimated cost of the toll project is USD 0.53 billion and it will be executed on design, build, finance operate and transfer basis. The construction period is 910 days and the concession period 26 years. IRB is already involved in four-laning the Solapur-Yedeshi section of NH-211 of 100 km and with this order it will now develop the entire road length of 288 km from Aurangabad to Solapur.

➤ **JSPL invests USD 800 million in Oman Steel Plant**

JSPL group has commissioned a green-field 2 million tonne (mt) steel plant in Sohar, Oman at an investment of USD 800 million. The green-field unit, part of Jindal Shaheed Iron & Steel, a wholly owned subsidiary of JSPL, is one of the largest steel plants in the Gulf region. JSPL had acquired Shaheed Iron & Steel's 1.5 mt gas-based hot briquetted iron (HBI) unit in 2010 for USD 500 million.

With the commissioning of the new facility, Jindal Shaheed, is tipped to emerge as one of the largest steel plants in the Middle East & Gulf region. The steel melting shop, using state-of-art technology from Danielli Italy, is Oman's first and largest such unit and was commissioned in 23 months from the start of work at the site.

➤ **L&T wins USD 0.75 billion order from Qatar Railways**

Engineering and construction company Larsen & Toubro (L&T) has won USD 0.75 billion order from Qatar Railways Company for design and



construction of the Gold Line of the Doha Metro project. The company has an order book of USD 28.17 billion and has given an order growth forecast of 15% for 2013-14. The deal includes design and construction of twin tunnels for 11 km and nine underground metro stations. This Metro project is among the key infrastructure projects of national interest.

Statutory compliance calendar for the month of May 2014			
Due date	Statutory compliance under Act	particulars	Governing Authority
			
06/05/2014	Service Tax	Payment of monthly service tax for the month of April by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of April on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/05/2014	Income Tax	Deposit of Income Tax TCS and TDS deducted in April	Central Board of Direct Tax.
	NBFC-D	Monthly return of exposure to capital markets in form NBS-6 by NBFC having total assets of 100 crore and above	Reserve Bank of India.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
10/05/2014	Central Excise	Monthly central excise return in form ER-1/ER-2 by other than SSI	Central Board of Excise and Custom
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	Central Board of Excise and Custom
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
11/05/2014	ESIC	Filing half yearly ESIC return	The employees' state insurance Act-1948. Ministry of labour and employment.
15/05/2014	Income Tax	(a) Income Tax TDS/TCS statement in form 24Q/26Q/27EQ (Other than Government) for the quarter January to February. (b) Return in form 27Q in respect of TDS from interest, dividend or any other sum payable to non-residents for the quarter January to March. (c) Monthly return of Provident Fund in form 10 of employees leaving the service during April	Central Board of Direct Tax.
	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of April. (b) Monthly return in form 5 for employees joining Provident Fund during April along with declaration in form 2 furnished by the employees. (c) Monthly return of Provident Fund in form 10 of employees leaving the service during April	The Central Board of Trustees, The Employees' Provident Fund Scheme, 1952
21/05/2014	ESIC	Payment of ESIC contribution for the month of April	The employees' state insurance Act-1948. Ministry of labour and employment.

Glossary

AAR	Authority of Advance Rulings
ADR	American Depository Receipt
ALP	Arm's Length Price
AO	Assessing Officer
AP	Association of Persons
APA	Advance Pricing Agreement
ATM	Automated Teller Machine
AY	Assessment Year
BCD	Basic Customs Duty
BI	Body of Individuals
BP	Balance of Payments
CA	Chartered accountant
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CENVAT	Central Value Added Tax
Customs Act	Customs Act, 1962
CIT	Commissioner of Income Tax
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CD	Countervailing Duty
DDT	Dividend Distribution Tax
DTA	Domestic Tariff Area
ECB	External Commercial Borrowings
ESI	Employee's state insurance
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FY	Financial Year
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GI	Government of India
GST	Goods and Services Tax
HUF	Hindu Undivided Family
ICAI	Institute of chartered accountant
IFRS	International Financial Reporting Standard
IDR	Indian Depository Receipt
IIP	Index of Industrial Production
IRDA	Insurance Regulatory Development Authority
ITR	Income tax return

LCD	Liquid-crystal Display
MP	Madhya Pradesh
MP	Market price
MF	Mutual fund
MSME	Micro Small and Medium Enterprises
NBFC	Non Banking Finance Company
NHAI	National Highway Authority of India
NPS	National Pension Scheme
NRI	Nonresident in India
NABARD	National Bank for Agriculture and Rural Development
OEM	Original Equipment Manufacturer
OET Act	Odessa Entry Tax Act, 1999
PSU	Public Service Undertakings
P&L	Profit & loss
PF	Provident fund
POTR	Point of Taxation Rules
QE	Quantitative Easing
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REF	Renewable Energy Fund
REIT	Real Estate Investment Trust
Rules	Income-tax Rules, 1962
SA	Standard on Auditing
SAD	Special Additional Duty
SC	Scheduled Caste
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
ST	Scheduled Tribes
ST	Service Tax
STP	Software Technology Park
STR	Service Tax Rules
STCG	Short Term Capital Gain
TIN	Transaction identification number
TNNM	Transactional Net Margin Method
Tribunal	Income tax Appellate Tribunal
TDS	Tax Deducted at Source
TPO	Transfer Pricing Officer
TED	Terminal Excise Duty
VAT	Value Added Tax
VCC	Venture Capital Companies
VCF	Venture Capital Fund
WPI	Wholesale Price Index
WT	Wealth tax
WB	World bank

BUSINESS ADVISORY

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

TAXATION SERVICES

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

AUDIT & ASSURANCE

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

OUTSOURCING ACCOUNTANTS

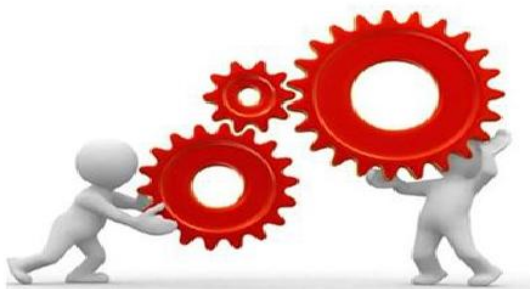
- Annual financial report preparation
- Preparation of general and special purpose statutory accounts
- Processing Payroll
- Cash management reporting
- Accounting system reviews
- Financial analysis
- General Accounting Support, as required by client.

RBI, FEMA, SEBI Services

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



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