Be in the know

India Spectrum

Volume 6 Issue 8
October - November 2013

pwc

In this issue

Corporate tax 06

Personal taxes 11

Mergers and acquisitions 14

Transfer Pricing 17

Indirect Taxes 20

Regulatory developments 22

Recent Alerts 27

www.pwc.in/tax-and-regulatory-services

Editorial

We are delighted to bring to you the latest issue of India Spectrum.

As we go to print, the results of state elections have just come in – while they were predictable in large measure, Delhi dished out a big surprise. Clearly, people seem to be hungry for a change and a more decisive government at both, the Centre and States, seems to be the demand from the public.

The annual rate of inflation, based on the monthly wholesale price index, stood at 6.46 % in September 2013 as against 6.10 % in August 2013, and 8.07 % in the corresponding month of the previous year. The index of industrial production for August 2013 fell to 0.6 % as against 2.8 % in July, mainly due to weak investments and consumer demand. The gross domestic product is expected to expand by 4.7 % this fiscal year before accelerating to 6.2 % in 2015. Growth momentum can be expected as strengthening exports will support recovery in industrial activity and new investment projects come on track.

The European Central Bank has cut its benchmark interest rate to a new record low of 0.25 %. The rate cut is seen as an outcome of the inflation in the Eurozone dipping to 0.7 % in October 2013, the lowest since January 2010. However, the US economy witnessed a rise at an annualised pace of 2.8 % in the third quarter of the year. The growth rate was faster than expected, and was an improvement on the 2.5% pace seen in the previous quarter. This growth was attributable to a rise in exports, businesses driving efficiency and a rise in home construction.

The new governor of the Reserve Bank of India (RBI), Mr. Raghuram Rajan, announced that foreign banks that convert their India operations from branches to wholly owned subsidiaries (WOSs) may be permitted to take over Indian private sector banks. The WOS structure is expected to serve RBI's objective of ensuring stability of the banking system by sharply delineating assets and liabilities of parent and subsidiary and thus effectively ring-fencing capital and assets of foreign banks in India.

Ketan Dalal

Shyamal Mukherjee

The RBI has permitted unlisted Indian companies to raise capital abroad within the next 2 years without a prior or subsequent listing in India. This permission is only for listings in countries with which the Security and Exchange Board of India (SEBI) has signed bilateral agreements, provided the companies comply with foreign direct investment norms and rules for usage of proceeds of listing.

The Bombay High Court (HC) has ruled in a writ proceeding that Vodafone India Services Pvt. Ltd., (Vodafone) must first submit its objections on the transfer pricing addition on share valuation issue before the Dispute Resolution Panel (DRP) on the basic issue of jurisdiction. Encouragement can be drawn from the fact that the HC empathised with the taxpayer's feeling of being harassed by an order passed without it being heard on its preliminary objection to the assessment. The HC has directed that if Vodafone was dissatisfied with the DRP's decision on this preliminary issue, then it could challenge this decision in a writ if it could make out a case that the DRP's decision was patently illegal.

Further, the Delhi HC held in Select Holiday Resorts Pvt. Ltd. that a change in shareholding pursuant to merger of subsidiary with parent company does not result in lapse of brought forward losses. The Mumbai Bench of the Tribunal held in KEC Holdings Ltd., that accrual (or otherwise) of income was a matter of fact and the ensuing system of accounting does not generate income, but only recognises it. The characterisation of an asset as non-performing does not affect income accrual. Factors such as realisability and security had to be considered before deciding on the accrual. Also, in Hathway Investments Pvt. Ltd., the Mumbai Bench of the Tribunal held on facts that a sale-and-lease-back transaction was a sham. The transaction was a 'finance lease' in nature and the taxpayer never intended to be the real and legal owner of the assets. Hence, the claim of depreciation for assets transacted under such an agreement was disallowed.

See page nos. 18, 14 and 9 respectively for a detailed analysis of these rulings.

We hope you enjoy this issue. As always, we look forward to hearing from you.

Ketan Dalal and Shyamal Mukherjee
Joint Leaders, Tax and Regulatory Services

Analysing tax issues

Corporate tax

Depreciation

Claim for depreciation through a rectification application denied, since it was not claimed either in the original tax return, assessment or re-assessment proceedings

Tibrewala Industries Pvt. Ltd. *v.* ITO [TS-573-ITAT-2013(Delhi-Tribunal)]

Depreciation not claimed in the original tax return, or during assessment or re-assessment proceedings, cannot be allowed on filing of rectification application under section 154 of the Income-tax Act, 1961 (the Act).

Facts

The taxpayer had neither provided for depreciation in its books of account nor had claimed it in its tax return submitted for Assessment Year (AY) 2003-04. Furthermore, the depreciation was not claimed during the assessment proceedings, or even during reassessment. Post assessment, the taxpayer submitted an application under section 154 of the Act requesting to allow depreciation. The tax officer (TO) initially accepted the claim, and subsequently withdrew the depreciation allowed in the rectification order on the ground that as the taxpayer had failed to claim the depreciation in its tax return, there was no mistake apparent which could be rectified under section 154 of the Act. The Commissioner of Income-tax (Appeals) (CIT(A)) confirmed the TO's order and concluded that income could not be determined at a figure lower than the returned income unless there was a revised return of income. Before the Income-tax Appellate Tribunal (the Tribunal), the taxpayer argued that the depreciation had been disallowed merely because it had not been claimed in the tax return. According to the taxpayer, the TO had overlooked Explanation 5 to section 32(1) of the Act which stipulates that section 32(1) of the Act shall apply, whether or not the taxpayer had claimed depreciation while computing total income.

Held

The Tribunal noted that depreciation had not been claimed in the return, during assessment and re-assessment proceedings. Therefore, the Tribunal upheld the TO's and CIT(A)'s orders passed under section 154 of the Act that the claim for depreciation could not be granted.

Depreciation disallowed on assets that were obtained under a purported sale-and-lease-back agreement by the taxpayer who never intended to be the real and legal owner of the assets

Hathway Investments Pvt. Ltd. *v.* ACIT [2013] 38 taxmann.com 389 (Mumbai-Tribunal)

The sale-and-lease-back transaction in this case was held to be a sham. It was held on facts that the transaction was 'finance lease' in nature, and that the taxpayer never intended to be the real legal owner of the assets. Hence, the claim of depreciation for assets obtained under the agreement was disallowed.

Facts

- The taxpayer had purchased energy meters for measuring electrical energy from the Gujarat State Electricity Board (GEB) for a consideration. The meters were immediately leased back to GEB.
- The taxpayer had paid the sale consideration to GEB after deducting first month's lease rental and some lease management fees.
- The lease rental and fees were credited to the profit and loss account. Further, 100% depreciation was claimed on the meters.
- The assessment was reopened under section 148 of the Act and the taxpayer furnished its return declaring a loss.
- The TO completed the reassessment, rejecting the taxpayer's claim for depreciation on meters. Since the transaction was treated as a finance lease transaction, capital component of payment comprised in lease rental was not allowed as a consequence.
- The CIT(A) upheld the TO's action disallowing the claim of depreciation to the taxpayer.

Held

- The Tribunal relied on I.C.D.S. Ltd. *v.* CIT [2013] 212 Taxman 550 (SC) wherein the Supreme Court (SC) had held that the two conditions necessary for claiming depreciation were that the taxpayer must be the

owner of the asset, either partly or wholly, and that the assets must be used for business purposes. The taxpayer claimed that after purchasing the meters, it owned them and hence was entitled to claim depreciation.

- The Tribunal observed that the meanings of the terms, 'finance lease', 'operating lease', etc. were not defined in the Act. The Tribunal therefore relied on IndusInd Bank Ltd *v.* Ad.CIT [2013] 19 taxmann.com 173 (Mumbai-Tribunal), wherein it had been held that the lessee was entitled to depreciation in case of a genuine 'finance lease'.
- The Tribunal further observed that there was no specific description of meters (like numbers, make/ manufacture, etc.) on the sale invoice and the lease agreement, which should have been mentioned since no physical delivery was affected. After analysing various stipulations in the Sale of Goods Act, 1930, the Tribunal concluded that the said goods were 'unascertained goods'.
- Even in case of sale of unascertained goods or future goods by description, goods of that description should be unconditionally appropriated to the contract, and both, the buyer and seller, must have assented to it. As the goods had not been delivered practically to the purchaser in this case, the Tribunal held that it could not gather from the sale invoice as to which ascertained goods were the subject matter of the sale transaction. Therefore, the transaction was not a 'sale' under the Sale of Goods Act. The Tribunal consequently held that the taxpayer did not own the meters; and as such, the subsequent lease back automatically got invalidated.
- According to the agreement, interest on the loan commenced from the day the financer paid money for the purchase of equipment, and not when the lessor had delivered the goods to the lessee, i.e. GEB. Thus, the Tribunal stated that the transaction was a 'finance lease'.
- It was noted that nowhere in the agreement was it mentioned that the transaction would be a sale-and-lease-back. Therefore, the intention of the parties in the transaction was not that of sale or lease, but rather a loan transaction that was given the shape of a 'lease', so as to defeat the provisions of the Act, and give the undue benefit of a claim of depreciation on the assets to the taxpayer, and of a lower interest rate on the loan to the GEB.
- On considering the clauses of the agreement, the Tribunal concluded that it was essentially a finance agreement given the appearance of a 'sale-and-lease-back' with the wrongful intent of gaining of tax benefits by the taxpayer for which it was not eligible.
- The Tribunal also rejected the taxpayer's contention that such transactions were not forbidden by law. According to the Indian Contract Act, 1872, where the object of an agreement was not expressly forbidden by law, but if permitted, it would defeat the provisions of law, such an agreement would be considered as unlawful. Thus, the transaction, even though it was with the state government, was treated as a sham.
- In the present case, an effort had been made to transfer the right to claim depreciation on the assets to the taxpayer, but not the assets themselves. The Tribunal highlighted that the notes to the GEB's annual accounts also indicated that the real intention was to enter into transaction of loan/ finance only and the taxpayer had never intended to be the real legal owner of the assets. Accordingly, the Tribunal disallowed the taxpayer's claim for depreciation on the said meters.

Doctrine of Promissory Estoppel

Taxpayer not held liable on failure to withhold tax on payment made to non-resident relying on a CBDT circular which was subsequently withdrawn – doctrine of promissory estoppel attracted

ACIT *v.* Capricorn Food Products India Ltd [2013] 38 taxmann.com 158 (Chennai-Tribunal)

Where taxpayer had paid commission to a non-resident on which it had failed to withhold tax under a bona fide *belief*

that it was not taxable at the time of payment, it could not be subsequently made liable for such failure due to withdrawal of the circular it had relied on.

Facts

- The taxpayer, engaged in export of food products, paid sales commission to agents abroad on which it had failed to withhold tax under section 195 of the Act.
- According to the TO, when the source of income emanated from the business activities of a taxpayer in India, the taxability of such income was governed by section 9 of the Act. Since the taxpayer had failed to withhold tax under section 195 on payments made for managerial services rendered by its foreign agents, section 40(a)(i) of the Act was attracted. Accordingly the TO disallowed the claim of the taxpayer.
- On appeal before the CIT(A), the taxpayer contended that at the time when the taxpayer effected the payments to the non-resident agents, it had relied on a circular which was subsequently withdrawn by the Central Board of Direct Taxes (CBDT). Since it had acted based on the law applicable at the time of its payment, it could not be now held liable due to its withdrawal. According to the taxpayer the doctrine of promissory estoppel applied.
- Based on the taxpayer's contention, the CIT(A) deleted the disallowance made by the TO opining that the taxpayer was well covered under the aforementioned CBDT circular.

Held

- The Tribunal observed that at the time the taxpayer had effected the payments to foreign agents, it could reasonably have held the *bona fide* belief that such payments were not income of the non-residents, exigible to tax in India.
- Further, the TO had not provided any finding that the non-residents had rendered any services that were technical in nature.
- Section 9(1)(vii)(b) of the Act mentioned that fees paid in respect of services utilised in a business or profession carried out by such a person outside India, or for earning income from any source outside India, would not come within the purview of income by way of fees for technical services. Introduction of Explanation to section 9(2) through the Finance Act, 2010 with retrospective effect from 1 June 1976 would therefore have no effect on the taxability of income earned by a non-resident outside India in the course of his business carried on outside India.
- Therefore, the Tribunal upheld the CIT(A)'s order deleting the disallowance pertaining to the commission paid to a foreign agent on which no tax was withheld.

Fees for Technical Services

Payment to a Singaporean company for conducting education programmes in India does not constitute Fees for Technical Services

Eruditus Education Pvt. Ltd., *In re* [2013] 37 taxmann.com 337 (AAR)

Payment made to Singaporean company engaged in providing education programmes not taxable as fees for technical services (FTS) as the services rendered were "for teaching in or by educational institutions" which were excluded from the purview of FTS under Article 12(5)(c) of India–Singapore Double Taxation Avoidance Agreement (the tax treaty).

Facts

The applicant, an Indian company, was engaged in providing executive education programmes. It entered into a Programme Partnership Agreement with INSEAD, a Singaporean business school to provide various management education programmes in India, France and Singapore, for which the applicant made payments to INSEAD. The applicant applied to the Authority for Advance Ruling (AAR) on the issue of taxability of the amount received by INSEAD.

Held

- The AAR observed that the services rendered by INSEAD involved expertise in, or possession of special skills, or knowledge that was technical in nature. Hence, payment for the service could be considered as 'FTS' under both, section 9(1)(vii) of the Act and under the India-Singapore tax treaty. However, the services rendered by INSEAD 'for teaching in or by educational institutions' were covered by the exclusion clause of Article 12(5)(c) of India-Singapore tax treaty. Thus, the payment would not constitute 'FTS' as per the India-Singapore tax treaty.
- Since the tax treaty overrode the provisions of the Act to the extent it was beneficial to the applicant, the amount paid to INSEAD was excluded from the definition of 'FTS' in India according to the India-Singapore tax treaty, though it was taxable under section 9(1)(vii) of the Act.
- Also, the AAR held that as INSEAD did not have a Permanent Establishment in India within the scope of Article 5(1) or 5(8) of the India-Singapore tax treaty, payments received by it from the applicant were not chargeable to tax in India, and hence, no tax was required to be withheld under section 195 of the Act while making such payments.

Commercial purpose

Aircrafts used in connection with taxpayer's business held exempt from wealth-tax where the aircrafts were used only for 'commercial purposes' and not for personal purposes

Commissioner of Wealth Tax *v.* Jay Pee Ventures Ltd. [2013] 37 taxmann.com 348 (Delhi-HC)

Aircrafts used in connection with business is use for 'commercial purposes' as distinct from use for personal purposes by the taxpayer-company, held exempt from wealth-tax.

Facts

- The taxpayer owned two aircrafts that were used for the purposes of the taxpayer's own business. Aircrafts 'other than those used by the taxpayer for commercial purposes' attracted wealth-tax. The TO held that only aircrafts that were either used for earning business income (e.g., by airlines) or held as stock-in-trade in a business of leasing out aircraft would be exempt from wealth-tax.
- According to the TO, an aircraft used by the taxpayer for its own business could not be treated as 'used for commercial purposes'. Therefore, an aircraft used for transporting goods of the taxpayer's own business or used by the directors or company executives could not to be treated as 'used for commercial purposes'. The TO accordingly treated the aircraft as an asset under section 2(ea)(iv) of the Wealth-tax Act, 1957 (WTA) liable to wealth-tax.
- The CIT(A) however held that the aircrafts owned by the taxpayer were not taxable assets within the meaning of section 2(ea)(iv) of the WTA, based on the decision of the Mumbai Tribunal bench in the case of Garware Wall Ropes Ltd. *v.* ACIT [2004] 89 ITD 221 (Mumbai–Tribunal).
- The Tribunal dismissed revenue's appeal since it was not in dispute that the two aircrafts were used by the taxpayer for its business.

Held

- The term 'commercial purpose' in the context of exclusion from the purview of the definition of assets under section 2(ea)(iv) of the WTA, was not defined in the WTA. The words, 'used by the taxpayer for commercial purposes' had to be understood to mean used by the taxpayer for purposes connected with its business. Therefore, where the taxpayer was using the aircrafts in connection with its own business and not for personal/ non-business purposes, the same would be a 'use by the taxpayer for commercial purposes'.
- When directors or executives of a company used an aircraft owned by the company to travel to its various offices or to various places for meetings for business purposes connected with the operations and activities of the company, such use of the aircraft would amount to usage for commercial purposes. The flexibility of travelling at short notice to various destinations without having the need to plan in advance was a practical necessity and helped business grow, expand and generate profit.
- The use of aircrafts 'for commercial purposes' did not necessarily entail hiring to third parties or leasing them. The legislative intent was not to restrict the meaning of the words, 'commercial purposes' to running the same on hire or using them as stock-in-trade.
- If the taxpayer had used the aircrafts for transporting the directors for excursions or other personal purposes, the aircraft would not have been exempt from wealth-tax. Since the Tribunal had recorded a finding of fact that the aircrafts were used by the taxpayer 'for business purposes', the High Court (HC) exempted it from wealth-tax.

Accrual of income

Non-Performing Asset characterisation not sufficient for non-accrual of interest

KEC Holdings Ltd *v.* ACIT [TS-438-ITAT-2013(Mumbai-Tribunal)]

Accrual (or otherwise) of income is a matter of fact and the system of accounting followed does not generate income but only recognises it. The RBI Directions 1998 have nothing to do with the computation of taxable income under the Act. The characterisation of an asset as an Non-Performing Asset (NPA) does not affect income accrual. Factors such as realisability and security are to be considered before deciding on the accrual of income.

Facts

The taxpayer is an Non-banking Financial Corporation (NBFC) engaged mainly in advancing loans on interest to group companies, with the share capital subscribed to, and loans advanced by, its holding company, KEC Intl. Ltd, constituting its principal source of funds. The taxpayer did not recognise interest on NPAs in the books of accounts, in line with the prudential norms prescribed by the RBI, which were binding on. Such interest was not offered to tax in the computation of taxable income of the taxpayer either.

The TO made an addition of INR 13.39 millions to interest accrued on NPAs that was not offered to tax by the taxpayer. The taxpayer had on record favorable Tribunal rulings in its own case for past periods in which such interest was deleted. However, on appeal by the taxpayer, the CIT(A) confirmed the additions relying on certain past decisions in other cases.

Held

The Tribunal commented that the accrual or otherwise of income or expenditure is essentially a matter of fact and not of law. It relied on the decision in the case of Southern Technologies Ltd. *v.* JCIT [2010] 320 ITR 577 (SC), in

which the Supreme Court (SC) clearly stated that in each case the taxpayer has to prove whether the income has accrued or not on the relevant parameters, and it is for the TO to accept or not the taxpayer's claim with reference to the real income theory.

In this case, the interest under reference had not been received even after a lapse of a number of years, and therefore, based on the decision of the SC, the case was restored to the file of the TO to adjudicate the issue afresh in accordance with law, independent of the guidelines issued by the RBI. The TO was directed to decide the matter by issuing definite findings, account wise, as to whether interest income can, given the facts and circumstances, be said to have accrued, *de hors* the classification of the relevant debts in accounts as NPAs. However, the onus to substantiate its case would be on the taxpayer, who is to be allowed reasonable opportunity to do so.

Editor's note

The above decision is in line with the recent decision of Madras HC in the case of CIT v. Sakthi Finance Ltd. [2013] 31 taxmann.com 305 (Madras), and affirms the principle of 'real income'. The Tribunal remanded the case back to the TO for him to examine whether the asset under consideration was actually an NPA based on commercial principles. If, based on commercial principles and not RBI guidelines, the asset is an NPA and interest is not actually recoverable, then the interest income ought not to recognised.

Capital gains

Loss arising on short-term capital asset is to be set off against income on the same asset class for the same year, irrespective of the nature of the transaction, i.e. whether 'off market transaction' or 'on market transaction'

ADIT (IT) *v.* Legg Mason Asia (Ex Japan) Analyst Fund [2013] 38 taxmann.com 12 (Mumbai – Tribunal)

Set off of short-term capital loss arising from 'on market transactions' against short-term capital gain on 'off-market transactions' allowed; the phrase 'similar computation' used in section 70(2) cannot be interpreted to mean that short-term capital loss from 'on market' transactions is to be first set-off against short-term capital gain on 'on market' transactions; computation of income is anterior to application of tax rate; differential tax rates irrelevant for loss set off.

Facts

The taxpayer, a Foreign Institutional Investor, claimed set-off of short term capital loss arising from 'on-market transactions,' with short-term capital gains arising from 'off-market transactions' for AY 2008-09. The same was rejected by the TO in the assessment order and by the CIT(A).

Held

Since this issue was covered by a series of orders, the Tribunal, relying on some of these, held that the 'option to set off the loss arising under the same class of income, i.e. on short term capital asset, notwithstanding the words 'similar computation' in section 70(2), would lie with the taxpayer. The Tribunal observed that the expression 'similar computation', as used in section 70(2) of the Act only means the computation as made under section 48 to 55 of the Act, and nothing more.

Editor's note

Reliance has been placed on the Tribunal rulings in First State Investments (Hong Kong) Ltd. v. ADIT [2011] 8 ITR 315 (Mumbai - Tribunal) & Fidelity Investment Trust Fidelity Overseas Fund v. ADIT [2010] 36 SOT 22 (Mumbai - Tribunal). This ruling reiterates that the option to set off the loss arising under the same source of income lies with the taxpayer and the words similar computation, emphasised by the TO seeking to draw a distinction between different types of transactions, is not of much relevance.

Assessing personal tax

Personal taxes

Capital gains

The TO to provide reasons for not considering taxpayer's objections to asset valuation considered under section 50C

CIT *v.* Chandra Narain Chaudhri [2013] 38 taxmann.com 275 (Allahabad - HC)

Where taxpayer has objected to higher value adopted by the Stamp Valuation Authority under section 50C(1), the TO should either refer valuation to Department's Valuation Officer (DVO) or rely on registered valuer's report under section 55A. In any event, the TO has to record reasons – either for accepting the report of the approved valuer submitted by the taxpayer or, if he does not accept the report, for referring the matter to the DVO. The reasons in either case must have nexus with the objection/claim made by the taxpayer and the objection which may be raised by the department against such valuation.

Facts

The taxpayer had sold a property in October, 2004. The property was old and was sold to the tenant at a certain price. For the purpose of capital gains, two valuation reports were filed before the TO - one for valuation as on 1 April 1981 at INR 0.39 millions and other for valuation as on October 2004 at INR 3.377 millions.

The TO noticed that the stamp valuation authority had valued the property at INR 7.848 millions. He did not accept valuation reports submitted by the taxpayer and instead, applying provisions of section 50C(1) of the Act, considered the value determined by the stamp valuation authority to compute the capital gain. The taxpayer contended that the actual sale consideration was much lower as it was sold to the existing tenant and hence capital gain should be worked out on the basis of the valuation reports submitted to the TO. The TO contended that as the taxpayer had not disputed such valuation determined by the stamp valuation authority and had paid stamp duty on such basis, it should be considered as the fair market value as on October 2004.

Held

The HC noted that section 50C of the Act was a rule of evidence in assessing valuation of property for calculating capital gains. However, the deeming provision under section 50C(1) of the Act were rebuttable. The HC highlighted that immovable property might have various attributes, charges, encumbrances, limitations and conditions. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition the property is a offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. Hence, such value may not reflect the fair market value for the sale of the property in its existing condition.

The HC observed that whenever the taxpayer claims before the TO that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub section (1) of section 50C of the Act exceeds the fair market value of the property as on the date of transfer, the TO may refer the valuation of the capital asset to the DVO and for that purpose, the procedure prescribed under the Wealth Tax Act are to be applied. In case of any such claim, the TO may rely on the report of registered valuer under section 55A of the Act and in such case it will not be necessary for him to refer the matter to the DVO.

However, in any event, the TO has to record sufficient reasons. He has to record reasons for accepting the report of the approved valuer submitted by the taxpayer along with his claim/objection under section 50C(2) of the Act. If he does not accept the report, he has to record the reason for referring the matter to the DVO. The reasons in either case must have nexus with the objection/claim made by the taxpayer and the objection, which may be raised by the department against the valuation determined in the report of the approved valuer.

Thus, the HC remanded the matter back to the TO to assess the valuation of the capital asset in accordance with law as explained by HC.

Conversion of property from leasehold to freehold would not impact taxability of capital gain as it is just an improvement of title

CIT *v.* Rama Rani Kalia [2013] 38 taxmann.com 176 (Allahabad - HC)

Mere conversion of leasehold land to freehold amounts to improvement of title and would not give rise to capital gain as such property was owned prior to such conversion. For the purpose of determining holding period for computing capital gain, the period over which asset is held is relevant, not the nature of title over property.

Facts

The taxpayer purchased an immovable property on leasehold basis in 1984 for INR 46,000. It was converted to freehold property on 29 March 2004 on payment of INR 0.134 millions. The property was then sold after 3 days on 31 March 2004 for INR 2 millions and long term capital gain was offered for tax after depositing INR 1.6 millions in the long term capital gains account. The TO taxed the capital gain as short term capital gain on the ground that the property was acquired by converting leasehold right into freehold right and was sold within 3 days upon such conversion.

Held

The HC observed that the difference between short term and long term capital gains is the period over which asset has been held and not nature of title over property. The lessee of the property has rights as owner of the property subject to covenants of the lease, for all purposes. Conversion of rights of the lessee from leasehold right into freehold is only by way of improvement of the rights over the property, which were enjoyed. Hence, such conversion would not have any effect on taxability of gains, which are related to period over which the property was held. In the instant case, as the property was held from 1984, such holding period is not less than 36 months, and hence the gain arising from such transfer would be of long term capital gain.

The conversion of property from leasehold to freehold was by way of improvement of title and would not have any effect on taxability of profits.

Computation of business income – amounts not deductible

Amendment to section 40(a)(ia) introduced in 2010 extending payment period of tax upto due date of filing tax return is retrospective

CIT *v.* Naresh Kumar [TS-436-HC-2013(Delhi - HC)]

Amendment introduced in 2010 to section 40(a)(ia) of the Act, extending period of payment till due date of filing of return for claiming deduction, is to be considered as retrospective in nature. Provisions relating to deduction of tax at source are procedural in nature and are meant to ensure that tax deducted gets deposited with the Government and non-taxpayers/filers can be identified. Section 40(a)(ia) of the Act is a provision incorporated with the said objective and purpose. Such a provision should not be converted into an iron rod provision which metes out stern punishment and results in malevolent results disproportionate to the offending act and the aim of the legislation. Hence, the disallowance under section 40(a)(ia) of the Act ought to be deleted if the tax was deposited before the due date of filing the tax return.

Facts

The taxpayer submitted his tax return for AY 2008-09 declaring a profit of INR 0.288 millions. The TO disallowed INR 5.216 millions as the taxpayer had failed to deposit the tax withheld of INR 52,672 before 31 March 2008 though the taxpayer had deposited such amount on 23 September 2008 i.e. before the due date of filing the tax return for AY 2008-09. The revenue submitted that section 40(a)(ia) of the Act was amended with effect from 1 April 2010 and not retrospectively and therefore, the tax should have been deposited on or before 31 March 2008. As this was not done, the entire amount of INR 5.21 millions ought to be disallowed.

Held

The HC stated that “Obedience to law is mandatory and has to be enforced but the magnitude of punishment must not be disproportionate by what is required and necessary. The consequences and the injury caused, if disproportionate do and can result in amendments which have the effect of streamlining and correcting anomalies. The amendments made in 2010 were a step in the said direction and this aspect has to be kept in mind when we examine and consider whether the amendment should be given retrospective effect or not.”

The cardinal rule is that the law to be applied is that which is in force on the first day of the assessment year, unless otherwise mandated expressly or provided by necessary implication. Based upon this broad dictum, there is a distinction between procedural and substantive provisions. Amendments to substantive law are treated as prospective, while amendments to procedural law are treated as retrospective. Section 40(a)(ia) of the Act, to the extent of the amendment, is procedural as by enacting section 40(a)(ia) of the Act, the Legislature did not want to impose a new tax but wanted to ensure collection of tax withheld. The amendments were introduced to streamline and remedy anomalies noticed in the said procedure by allowing deduction in the year when the expenditure is incurred, provided tax withheld is paid before the due date for filing of the return. However, the principle of fairness should be emphasized and classification of statute as substantive or procedural does not necessarily determine whether the enactment or amendment has retrospective operation. A machinery provision should be so construed so as to effectuate the liability imposed by the charging section and to make the machinery workable. However, when the machinery section results in unintended or harsh consequences which were not intended, the remedial or correction action taken is not to be disregarded but given due regard. Marginal and medium taxpayers can suffer adverse consequences if the principle of matching is not applied to the expenditure incurred during the year and the deductibility of such expenditure in the same year.

The HC also referred to its own ruling in the case of CIT *v.* Rajinder Kumar (ITA No. 65/2013) wherein, it was held that the two sections - 43B and 40(a)(ia) of the Act are akin and the provisos to those sections are to the same effect and for the same purpose. In view of the principles of fairness and keeping in mind the intent and objective of these provisions, the HC concluded that as the taxpayer did not violate the un-amended section 40(a)(ia) of the Act, the amendment to section 40(a)(ia) extending the period of payment of tax withheld upto the due date under section 139(1) of the Act was to be considered as retrospective in nature, and hence deleted the disallowance under section 40(a)(ia) of the Act.

Structuring for companies

Mergers and acquisitions

Business sale

Business transfer consideration allocated to intangibles not in existence, not proved

Merck Ltd *v.* ACIT [2013] 37 taxmann.com 408 (Mumbai - Tribunal)

If in the facts of the transaction, no intangible assets have been proved to be transferred by the taxpayer, the consideration received by the taxpayer cannot be allocated to transfer of intangibles. Accordingly, the substance of the transaction should be considered in analysing the tax implications of the transaction.

Facts

The taxpayer, an Indian company, transferred its analytical research business to its sister concern by way of a sale agreement and allocated a major part of the sales consideration to intangibles relating to the business. It declared long term capital gains on account of the transfer of business and claimed exemption under section 54EC of the Act on it.

The TO rejected the taxpayer's claim because the taxpayer was not able to produce any evidence of expenditure in support of the intangibles transferred by it. The brand name, trademark etc that the taxpayer claimed to have transferred belonged to the parent company and was being used by the taxpayer even after its transfer and there was no evidence of the existence of other intangibles. Therefore, the TO concluded that the entire transaction undertaken by the taxpayer was to escape its tax liability by claiming exemption under section 54EC, and hence the entire gains were taxed as business income under section 28(iv) of the Act.

The DRP confirmed the TO's order stating that the taxpayer had capitalised these assets for the first time as intangibles in the year of transfer. Furthermore, it stated that the taxpayer was claiming the expenditure for acquiring these assets as revenue expenditure while gains on sale were being treated as long term capital gains.

Aggrieved, the taxpayer filed an appeal with the Tribunal.

Held

- The Tribunal accepted the taxpayer's claim of non-applicability of section 28(iv) of the Act relying on the decision in the case of Mahindra and Mahindra [2003] 128 Taxman 394 (Bombay-HC) in which 28(iv) of the Act is applicable only when benefit is received in kind.
- It observed that the TO's conclusion regarding the existence and transfer of intangibles had merit and could not be ignored.
- It rejected the taxpayer's claim that the transaction could be regarded as slump sale since values were assigned to individual assets.
- The Tribunal further noted that the agreement provided for a non-compete condition for 7 years. It therefore remitted the matter to the TO for examining whether the amount allocated to intangibles should be considered an amount received towards a non-compete fee or other consideration.

Editor's note

The judgement clearly emphasises that the facts of the transaction should be analysed in detail in deciding the taxability of the transaction. The judgement re-emphasised the ruling of the Mumbai Tribunal in the case of Mahindra and Mahindra (above) wherein it was held that section 28(iv) of the Act is applicable only when benefit is received in kind.

Carry-forward of losses

Change in shareholding pursuant to merger of subsidiary with parent company does not result in lapse of brought forward losses

CIT *v.* Select Holiday Resorts Pvt. Ltd. [2013] 35 taxmann.com 368 (Delhi - HC)

Facts

98% shareholding of the taxpayer company was held by another Indian company, IIPL, whose 100% shares were held by four individual promoters who had the control and management of IIPL and the taxpayer company.

IIPL merged with the taxpayer company pursuant to which shares of the taxpayer company held by IIPL were cancelled and shares were issued to the promoters of IIPL.

The TO disallowed the set-off of carried forward business loss under section 79 of the Act on the basis that the merger resulted in a change in shareholding of the taxpayer company. The taxpayer company contended that earlier the promoters were

holding shares of the taxpayer company through IIPL whereas now they hold more than a 51% share directly. Accordingly, the shares of the taxpayer company continue to be beneficially held by the same shareholders and the provisions of section 79 of the Act have not been violated.

Held

The HC upheld the order of the Tribunal and the CIT(A) wherein it was held that due to merger of IIPL with the taxpayer company, the former came to an end, as a result of which the shares of the amalgamated company were allotted to the share holders of IIPL. The present case is akin to the death of a shareholder, and the management remained with the persons who held control before the merger. It was held that when existence of a company is legally finished, the benefit of assets held by it (including shares in another company) will pass on to its shareholders. Thus, the HC held that since the shareholders beneficially entitled to 98% of the shares continued to be the same, the provisions of section 79 of the Act would not be applicable.

Editor's note

The decision of the Delhi HC is an important decision and is the first of its kind which has equated dissolution (without winding up) of a company with the death of a shareholder and has held that the provisions of section 79 of the Act cannot be applied in the case of a change in shareholding pursuant to dissolution of shareholders on account of merger as long as management remained with the persons who held control before the merger.

Nature of compensation income

Compensation received for breach of right of first refusal is a capital receipt

Parle Soft Drinks Pvt. Ltd. *v.* JCIT [TS-467-ITAT-2013(Mumbai – Tribunal)]

Payment received by the taxpayer as compensation for breach of right of first refusal (ROFR) is to be treated as capital receipt if the trading structure of the taxpayer itself is impaired or such cancellation results in loss of what may be regarded as the source of the taxpayer's income.

Facts

The Parle Group of companies had entered into an agreement with The Coca Cola Co. (TCCC) for transfer of intellectual property rights in respect of various brands of beverages/soft drinks owned by the Parle Group. The parties also executed a ROFR agreement in favour of Parle for bottling rights in the territories of Bangalore and Pune. Under the agreement, a new company, i.e. Parle Soft Drinks Pvt. Ltd (the taxpayer) was established for conducting bottling operations in Bangalore.

Later, in the wake of liberalisation in India, TCCC decided to set up its own bottling plant in Bangalore. This led to breach of obligation by TCCC in respect of ROFR and dispute between the Parle Group and TCCC.

The taxpayer received compensation from TCCC for breach of ROFR and treated this as capital receipt not chargeable to tax in its return of income.

Held

The Tribunal relied on the decision of SC in the case of Kettlewel Bullen & Co. Ltd. *v.* CIT [1964] 53 ITR 261 (SC) wherein it was held that payment made to compensate a person for cancellation of a contract which did not affect the trading structure of business, nor deprived them of the substance of their source of income shall be regarded as revenue receipt, and compensation received for loss of source of income shall be regard as capital receipt not chargeable to tax.

Thus, in this case since there was loss of the source of income, the compensation which was received by the taxpayer was in the capital field, i.e. capital receipt.

The Tribunal held that such a receipt also cannot be taxed as capital gain, since there was no transfer or extinguishment of any rights as TCCC had never passed on any kind of a right to the taxpayer for manufacture. TCCC had merely agreed that bottling business in Bangalore would be done by the taxpayer and since TCCC did not fulfil the obligation for allowing the taxpayer to conduct this, there was a breach for which compensation was payable.

By the grant of ROFR, the taxpayer did not get the right to manufacture. It merely connotes preferential opportunity

to prove it worthy of grant of full-fledged manufacturing right. There was neither any transfer of intangibles asset such as patent, trademark, knowhow, etc., nor any kind of asset. Thus, it cannot be a case of transfer of an asset and, hence, cannot be subject to taxation under the head capital gain.

Editor's note

The judgement has further highlighted that compensation received for loss of major source of income shall be regarded as capital receipt and shall not be chargeable to tax. This decision in this case throws light on the fact that compensation received for breach of ROFR cannot be taxed as capital gains since receipt of compensation pursuant to ROFR cannot be regard as receipt of compensation pursuant to transfer of right.

Regulatory updates

Application for change in category of Alternative Investment Funds

CIR/IMD/DF/12/2013

Regulation 7(2) of the SEBI Alternative Investment Funds (AIFs Regulations, 2012 specifies as follows:

"An Alternative Investment Fund which has been granted registration under a particular category cannot change its category subsequent to registration, except with the approval of the Board."

With regard to the aforementioned, the following was further specified with the intention to protect the interests of investors in securities and to promote the development of, and to regulate the securities market:

- Only AIFs who have not made any investments under the category in which they were registered earlier shall be allowed to make application for change in category.
- Any AIF aiming to change its category must make an application to SEBI accompanied by the application fee of INR 0.1 million.
- In the case an AIF had received any commitments/raised funds prior to submitting an application with SEBI for change in category, it shall be required to provide all its investors the option to withdraw their commitments/funds without any penalties.
    - Partial withdrawal may be allowed subject to compliance with the minimum investment amount required under the AIF Regulations.
- The AIF shall not make any investments other than in liquid funds/banks deposits until approval for change in category is granted by SEBI.
- The AIF must send a copy of the revised placement memorandum and other relevant information to all its investors once SEBI approves the request of AIF to change the category.

Investment by Qualified Foreign Investors in Indian Corporate Debt

CIR/IMD/FIIC/13 /2013

Qualified Foreign Investors (QFIs) had been allowed to invest in Indian Corporate Debt Securities (CDS) and debt schemes of Indian mutual funds, in addition to mutual funds and equity.

Previously, investment by QFIs was limited to:

- Purchase and sale of CDS on recognised stock exchange(s),
- Purchase of CDS through public issues,
- Sale of CDS by way of buyback or redemption by the issuer,
- Purchase and sale of unit of debt schemes of Indian mutual funds.

It has now been decided to allow QFIs to invest in "to be listed" CDS directly from the issuer. This is provided further that the debt issue cannot be listed within 15 days of issue for any reasons whatsoever, and then the holding of the QFI shall be sold off only to domestic participants/investors until the securities are listed.

This decision was established based on the feedback of market players to align the eligibility criteria for investment in debt securities between SEBI and the RBI, and to bring QFI and Foreign Institutional Investors (FII) at par for investment in "to be listed" debt securities.

Pricing appropriately

Transfer pricing

Prelude

Over the years, the Transfer Pricing Law and challenges faced by taxpayers have undergone momentous changes. As things stand, even as some of the fundamental issues are attaining closure through rulings of the Tax Tribunal and Courts and occasional legislative clarification, newer and more complex areas of dispute are emerging. With each passing year, the number of disputes going to the Tax Tribunals and Courts is mounting, and while cases are getting adjudicated, the disposals have not kept pace.

With a view to address dispute resolution and in fact pre-empt disputes in the first place, the Government has, in the course of about the last year, introduced various offerings to enable taxpayers to choose their modus operandi of dispute resolution, with options provided at every stage. Accordingly, with the introduction of Safe Harbour rules and Advance Pricing Arrangements, in addition to Mutual Agreement Procedure as an alternate dispute resolution mechanism, a slew of alternatives are now available to the taxpayer. These options come at different "price points" (for example, safe harbours entail a premium paid to avoid litigation in the form of a higher mark-up, and litigation involves long drawn out proceedings).

The directions from the current members of the DRP (where the Revenue as well as the taxpayer have a right of appeal) are now being received and it will be interesting to observe to what extent the Revenue proceeds in appeal against the orders from the triumvirate of Commissioners. In any event, whatever be the alternate dispute resolution channels, the primary objective is to attain certainty of outcomes for the taxpayers undertaking transactions, with a view to prevent avoidable litigation.

In the meanwhile, Tax Tribunals across India were engaged in pronouncing transfer pricing rulings, a few of which noticeably differed with or distinguished the observations of the Tax Tribunals in earlier similar case proceedings. We have provided a brief summary of such recent rulings.

Capacity utilisation adjustment upheld

Global Turbine Service Inc *v.* ADIT [TS-259-ITAT-2013(Delhi-Tribunal) - TP]

The taxpayer was engaged in manpower sourcing and providing support services to its Associated Enterprises (AEs) that identified their personnel requirements. The taxpayer was required to provide such personal staff for the specific project and duration. The taxpayer had commenced its operations in September 2003 and FY 2004-05 was the first full year of its operations. The taxpayer had reported losses in this gestation period due to inadequate volumes of work generated during the year. It was stated that unutilised capacity had an adverse impact on the taxpayer's business, which resulted in unabsorbed overheads and operating losses. During the assessment proceedings, the Transfer Pricing Officer (TPO) made a transfer pricing adjustment on account of its transaction relating to provision of sourcing and support services holding that the taxpayer was working as a manpower sourcing and support services provider and assumed all the operational/ business risks such as market risks, foreign exchange risks, and capacity risks. The CIT(A) confirmed the adjustment proposed by the TPO.

On appeal the Tribunal held:

- Suitable adjustment for non-utilisation of capacity is to be taken in to account after considering the arm's length price (ALP) while working out TP adjustment; and
- In the given facts and circumstances it was required on the part of the lower authorities to have given due effect to the unutilised capacity of the taxpayer while determining the ALP.

The matter was remanded back to the file of the TO/TPO to decide afresh after giving the taxpayer adequate opportunity of being heard and to file the necessary evidence.

Editors Note: *This ruling follows similar other orders providing for capacity utilisation adjustment in the cases of Brinton Carpets Asia Pvt. Ltd. (Pune Tribunal) and Genisys Integrating Systems (India) Pvt. Ltd. (Bangalore Tribunal).*

21% mark-up accepted as arm's length for investment advisory services – broking, asset management, merchant banking and credit rating companies rejected as comparables

Temasek Holdings Advisors India Pvt. Ltd. *v.* DCIT [TS-203-ITAT-2013 (Mumbai-Tribunal) - TP]

Temasek Advisors India (the taxpayer) was engaged in providing investment advisory services to its AEs in Singapore for tax years 2007-08 and 2008-09. The services provided by the taxpayer include identifying and analysing potential investment opportunities in India, evaluating political economic scenarios for the investment purpose in India and monitoring and making recommendation to its AE in respect of potential investment opportunities in India, specifically for unlisted companies.

The taxpayer is compensated on a cost plus basis with a mark-up of 21%. The company provided six comparables that were mostly investment advisory service companies with mean Operating Profit/Total Cost (OP/TC) of 13.85%. (It is not clear from the ruling whether the OP/TC is based on single year update or two year average).

The TPO rejected all the comparables provided by the Company, and identified a completely different set of comparables with mean OP/TC of 54.88%. This list of comparables included broking, asset management, merchant banking and credit rating companies.

The DRP confirmed the comparables selected by the TPO. Therefore, the taxpayer preferred an appeal before the Tribunal and the Tribunal held that the comparables provided by the TPO were not functionally comparable, and concluded that the comparables selected by the taxpayer were appropriate.

Key takeaways

The Tribunal held that broking, asset management, merchant banking and credit rating companies are not functionally comparable to companies providing investment advisory services, with the following specific observations:

- In respect of broking companies, it has been held that such companies assume far more risks;
- In respect of asset management companies, it has been held that these companies assume various risks and are regulated entities that require a SEBI license to conduct business.

The Tribunal has held that the TPO cannot reject comparables which were accepted as comparable in the earlier and succeeding tax years without providing proper reasons or on account of change in the functionality and any financial data.

The Tribunal dismissed the TPO's allegation that the taxpayer should have used the Capitaline database instead of Prowess database using the key words "investment advisory services" without giving reasons why the Prowess database is not reliable.

HC gives option to Vodafone to again file writ if DRP decision 'patently illegal'

Vodafone India Service Pvt. Ltd. *v.* UoI [2013] 39 taxmann.com 201(Bombay-HC)

This much-awaited ruling in the context of the writ application filed by Vodafone India Services Pvt Ltd (the taxpayer) has been released. The taxpayer had challenged the following Transfer Pricing (TP) adjustments made by the Revenue:

- alleged undervaluation of shares issued by the taxpayer in favour of its AE; and
- imputing of notional interest on such alleged undervaluation of shares, by treating the shortfall as loan advanced by the taxpayer to its AE.

The taxpayer challenged these adjustments as being patently illegal and without jurisdiction. This was on the basis that the purported undervaluation could never have been brought under the ambit of taxation by taking recourse to TP, as it was on the capital account.

In its ruling, the HC did not delve into the merits of the case, and disposed the writ, with a direction to the taxpayer to first file its objections before the DRP on the basic issue of jurisdiction, i.e. whether TP provisions under Chapter X of the Act apply at all.

The HC has further directed that in the case the decision of the DRP on this preliminary issue remains prejudiced against the taxpayer, then the taxpayer can challenge such decision in a writ, provided the taxpayer makes out a case, at that stage, that such decision is patently illegal. The HC has directed that the taxpayer would have the option to then file a writ regardless of the availability of alternate remedy before the Tribunal.

Some pertinent observations made by HC

- The taxpayer had, from the very outset, raised the primary objection that the alleged undervaluation could never have been brought into the ambit of taxation by applying TP provisions, as no income arose. However, neither the TO nor the TPO dealt with this primary objection. Furthermore, the taxpayer, in its wisdom, had not raised such primary objection before the DRP, and had made this only before the HC in its writ application. The HC, accordingly, distinguished the cases of Hindalco Industries Ltd. *v.* ACIT [2012] 211 Taxman 315 (Bombay - HC) and the previous Bombay HC ruling in case of Vodafone India Services (P) Ltd. *v.* UOI [2013] 37 taxmann.com

250 (Bombay - HC) (of September 2013), and decided against dismissing the writ on the basis of availability of alternative remedy.

- In view of section 92(1) of the Act, there must be income arising and/or affected or potentially arising and/or affected by an international transaction to apply Chapter X. This jurisdictional issue had to be dealt with by either by the TPO or the TO when specifically raised by the taxpayer, before determination of ALP, or else the entire exercise of determining ALP would become academic.
- Where the taxpayer specifically objects to jurisdiction to tax under Chapter X, then it would be for the TO to first decide this issue, before referring the transaction to the TPO. In such a situation, the grant of a personal hearing by the TO to the taxpayer before referring the matter to the TPO had to be read into section 92CA(1) of the Act. On this point, the HC disagreed with the view taken by Gujarat HC in the case of Veer Gems *v.* ACIT [2013] 351 ITR 35 (Gujarat - HC). The HC added that the CBDT circular regarding distribution of files based on value (i.e., INR 150 millions) could not detract from the TO's obligation to follow the principles of natural justice. If the TO failed to discharge such obligation, then such a preliminary or fundamental objection would need to be heard and adjudicated by the DRP.
- The HC distinguished the present case from the AAR ruling in the case of Castleton Investments, *In re* [2012] 24 taxmann.com 150 (AAR), because in that case, the issue was whether income arising from an international transaction was chargeable to tax or not, in view of the tax treaty between India and Mauritius. There was no dispute therein that income arose from the international transaction. However, in the present case, the preliminary objection raised by the taxpayer was that no income *per se* arose from the international transaction and Chapter X of the Act was thus not applicable.
- The process before the DRP is a continuation of the assessment proceedings, as only thereafter would a final appealable assessment order come into existence. Thus, the DRP is very much competent to deal with the fundamental objection raised by the taxpayer on *per se* taxability of the alleged undervaluation of shares issued by the taxpayer. The proceeding before the DRP was not an appeal proceeding but a correction mechanism in the nature of a second look at the proposed assessment order by high functionaries of the Revenue, keeping in mind the interest of the taxpayer.
- The HC empathised with the taxpayer and acknowledged that it would be natural for the taxpayer to feel harassed as, despite specifically raising the objection of non-applicability of Chapter X of the Act, the TO did not give any opportunity of being heard before making a reference to the TPO, and neither the TPO nor the TO dealt with this preliminary objection. The HC urged the Revenue to be more sensitive to the just demands of the taxpayer and to not treat the taxpayer as an adversary who had to be taxed, no matter what.

Taxing of goods and services

Indirect Taxes

Case law

VAT/Sales Tax/Entry Tax/Professional Tax

Decision of advance ruling authority is binding upon the applicant and all other non applicant dealers dealing in such goods

Rak Ceramics (India) Pvt. Ltd. *v.* The Assistant Commissioner [2013] VIL (62) AP

The Andhra Pradesh HC has held that the decision of the Advance Ruling Authority is binding upon the applicant and other non-applicant dealers who are dealing in the goods or executing transactions in relation to which a clarification was sought. However, the binding effect of the advance ruling shall cease temporarily, if the dealer, at whose instance the ruling was rendered files an appeal against it.

Input tax credit cannot be denied merely on technical violation that Value added tax (VAT) is not separately mentioned on the invoice

21st Century Builders and Engineers *v.* State of Punjab [2013] (45) PHT (503-PVT)

The Punjab VAT Tribunal has held that input tax credit cannot be denied merely on a technical violation that VAT has not been separately charged on the invoices.

CENVAT

Interest implication arises on premature availment of Central value added tax (CENVAT) credit in relation to capital goods

Sanghi Industries Ltd *v.* CCE [2013] (294) ELT (303)

The Ahmedabad Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that 100% credit availed on capital goods in first year instead of 50% tantamount to availment of credit in advance and demand for reversal of credit cannot be upheld in such case in as much as balance 50% credit would be admissible in the next year and thus appellant is liable to pay only interest on such premature availment of CENVAT credit.

Penalty not to be imposed where CENVAT credit wrongly availed is reversed with interest

CCE *v.* Guarniflon India Pvt. Ltd. [2013] (293) ELT (703)

The Ahmedabad CESTAT has held that penalty under Section 11AC cannot be imposed when CENVAT credit wrongly availed, but *suo-moto* reversed with the interest after being pointed out by internal auditors of the taxpayer.

Service Tax

Transfer of assets without transferring their ownership do not merit classification under "BFIS"

Vidarbha Iron & Steel Corporation Ltd *v.* CCE [2013] TIOL (1182)

The Mumbai CESTAT has held that mere leasing of land, building and plant and machinery without an option to transfer the ownership of the assets at the expiry of the lease term do not merit classification under "Banking and financial service"(BFIS) for the purpose of levying service tax.

Marketing and sales support services in India to group companies located outside India would qualify as export of services

Tandus Flooring India Pvt. Ltd. [2013] TIOL (03) ARA-ST

The AAR has held that the marketing and sales support services in India provided by the applicant to its group companies located outside India for which the consideration to be received in foreign exchange would qualify as export of services under rule 6A of the Service tax Rules, 1994.

Service tax not leviable on material supplied on FOC basis by service provider

Bhayana Builders Pvt. Ltd. *v.* CST [2013] TIOL (1331) CESTAT-DEL-LB

The Delhi CESTAT has held that goods and materials supplied free of cost (FOC) by a service recipient to the provider of taxable construction service will not form part of the gross amount for the purpose of levy of service tax.

Customs / Foreign Trade Policy

Refund of Special Additional Duty of Customs (SAD) cannot be denied where imported goods do not undergo any fundamental change in the identity before selling in the market

Ganesh Saw Mill *v.* CC [2013] TIOL (1124) CESTAT-MUM

The Mumbai CESTAT held that refund claim of SAD cannot be denied where the imported good does not undergo any fundamental

change in the identity of the goods before selling in the Indian market.

Custom authorities cannot challenge the validity of the import license issued by DGFT authorities

ESPN Software India Pvt. Ltd. *v.* CC [2013] (293) ELT (535)

The Delhi CESTAT has held that customs authorities cannot challenge the validity of the import license issued by the DGFT authorities when issuance of such import license is allowed in terms of the relevant provisions of FTP applicable at the time of import.

The Harmonised System of Nomenclature can be resorted to for ascertaining the meaning of any expression used in the Customs Tariff Act (CTA)

PSL Ltd *v.* CC [2013] TIOL (1271) CESTAT-MUM

The Mumbai CESTAT has held that Customs Tariff Act, 1975 (CTA) is based on Harmonized System of Nomenclature (HSN) and in case of doubt HSN is a safe guide for ascertaining the meaning of any expression used in the CTA.

Lump-sum fee payable to overseas supplier is not addable to value of imported goods

Volkswagen Group Sales India Pvt. Ltd. *v.* CC [2013] TIOL (1289) CESTAT-MUM)

The Mumbai CESTAT held that lump-sum fee payable to overseas supplier for sole distribution rights regardless of profit/loss or sale in India, is not addable to the value of imported goods as the fee does not relate to subsequent sale of goods in India.

Notifications / circulars

The Central Board of Excise and Customs has clarified various emerging issues after the introduction of the Service Tax Voluntary Compliance Encouragement Scheme

Circular No. 170/5 /2013-ST and VCES FAQ booklet both dated August 8, 2013

The Central Board of Excise and Customs (CBEC) have clarified various emerging issues post introduction of the Service Tax Voluntary Compliance Encouragement Scheme (STVCES). The CBEC has also issued an FAQ booklet to address the apprehensions of the stakeholders with respect to the STVCES.

Purchase order can be accepted as a "deed of contract" for the purpose of Project Import Regulations, 1986

Circular No. 31/2013-Customs dated 6 August, 2013

The Central Government has clarified that a purchase order can be accepted as a "deed of contract" for the purpose of registration with Customs authorities in terms of Project Import Regulations, 1986.

Goods imported or procured under the Served from India Scheme (SFIS) can be transferred after 3 years

Notification No. 30 (RE 2013) /2009-14 dated 1 August, 2013

The Central Government has provided that goods imported or procured against the Served from India Scheme (SFIS) scrips can be transferred on completion of 3 years from the date of import or procurement of such goods.

Issuance of speaking order in case of sanction or rejection of drawback claim is mandatory

Circular No. 35/2013-Customs dated 5 September, 2013

The Central Government has clarified that a speaking order has to be issued in case of sanction or rejection of drawback claims for re-export of goods.

Following the rulebook
Regulatory developments

FEMA

Foreign Direct Investment (FDI)

Unlisted Companies - Raising capital in the international market through American Depository Receipt/Global Depository Receipts Foreign Currency Convertible Bond route

A.P. (DIR Series) Circular No. 69 dated November 8, 2013

The RBI has permitted unlisted Indian companies to raise capital abroad without the requirement of prior or subsequent listing in India, subject to the compliance with the following key conditions:

- ***Eligible Unlisted Companies:*** The criteria of eligibility of unlisted companies raising funds through American Depository Receipt (ADR)/Global Depository Receipts (GDR) shall be as prescribed by the Government of India.
- ***Country of overseas listing:*** Overseas listing shall be done only on exchanges in International Organization of Securities Commissions (IOSCO)/ Financial Action Task Force (FATF) compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements.
- ***Utilisation of proceeds raised through overseas listing:*** For retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions. In case the funds raised are not utilised abroad, the company shall repatriate the funds to India within 15 days and the money shall be parked only with AD Category-1 banks to be used for eligible purposes;
- ***Compliance with FDI Regulations:*** The ADRs/ GDRs shall be compliant with sectoral cap, entry route, minimum capitalisation norms, pricing norms, downstream investments, reporting requirements etc. as laid down in FDI Regulations.

This window will be available for a period of two years.

Acquisition of shares of listed Indian company on Stock Exchange under the FDI scheme

A.P. (DIR Series) Circular No. 38 dated September 4, 2013

The RBI permitted non-residents, including Non-resident Indians (NRIs), to acquire shares of listed companies on recognised stock exchanges through a registered broker, provided the non-resident investor has already acquired, and continues to hold control, in accordance with the SEBI Takeover Code.

Amendment in Guidelines for downstream investment by Indian companies

A.P. (DIR Series) Circular No. 42 dated September 12, 2013

The RBI has clarified that all Indian companies (operating as well as investing) can make downstream investment through internal accruals. Earlier, the RBI guidelines had created some doubts on the subject.

Issue of Bank Guarantee on behalf of person resident outside India for FDI transactions

A.P. (DIR Series) Circular No. 37 dated September 5, 2013

The RBI has now permitted Authorised Dealer (AD) bankers to issue bank guarantee, without prior approval of the RBI, on behalf of a non-resident acquiring shares or convertible debentures of an Indian company through open offers/ delisting/exit offers, provided:

- the transaction is in compliance with the provisions of the SEBI Takeover code; and
- the guarantee of the AD banker is covered by a counter guarantee of a bank of international repute and is co-terminus with the offer period.

External Commercial Borrowings (ECB)

ECB for General Corporate Purpose from foreign equity holder

A.P. (DIR Series) Circular No. 31 dated September 4, 2013

Eligible borrowers may now avail ECB for general corporate purpose under the approval route from their foreign equity holder company with minimum average maturity of 7 years subject to the following conditions:

- Minimum paid-up equity of 25% should be held directly by the lender; and
- Repayment of the principal can commence only after completion of minimum average maturity of 7 years.
- No prepayment will be allowed before maturity.

Liberalisation of definition of Infrastructure Sector

A.P. (DIR Series) Circular No. 48 dated September 18, 2013

The definition of infrastructure sector for the purpose of ECB Regulations has been expanded to include new sector and provide details of sub-sectors that would be covered under existing sectors.

i) Newly added Sector : Social and commercial infrastructure sectors

- Hospitals (capital stock and includes medical colleges and para medical training institutes)
- Hotel Sector which will include hotels with fixed capital investment of INR 2000 millions and above, convention centres with fixed capital investment of INR 3000 millions and above and three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value)
- Common infrastructure for industrial parks, Special Economic Zones (SEZs), Tourism facilities
- Fertilizer (capital investment)
- Post harvest storage infrastructure for agriculture and horticulture produce including cold storage
- Soil testing laboratories

ii) Sectors defined in detail	
Energy (earlier Power)	• Electricity generation, electricity transmission, electricity distribution • Oil pipelines and gas pipelines (includes city gas distribution network) • Oil/gas/liquefied natural gas, storage facility (includes strategic storage of crude oil)
Communication (earlier Telecommunication)	• Mobile telephony services / companies providing cellular services, • Fixed network telecommunication (includes optic fibre / cable networks which provide broadband / internet) • Telecommunication towers
Transport (earlier Road including bridges, Seas Port and Airport)	• Railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading / unloading terminals, stations and buildings) • Roads and bridges • Ports and inland waterways • Airport • Urban public transport (except rolling stock in case of urban road transport)
Water and sanitation	• Water supply pipelines • Solid waste management, water treatment plants, sewage projects (sewage collection, treatment and disposal system) • Irrigation (dams, channels, embankments, etc.) and storm water drainage system

Refinancing/Rescheduling of existing ECB

A.P. (DIR Series) Circular No. 59 dated September 30, 2013

Existing facility available under the approval route of refinancing an existing ECB by raising fresh ECB at a higher all-in-cost / rescheduling an existing ECB at a higher all-in-cost has been discontinued with effect from 1 October, 2013.

Amendments in Trade Credits

A.P. (DIR Series) Circular No. 53 dated September 24, 2013

Indian Companies in all sectors (earlier only companies in Infrastructure sector) have been permitted to avail trade credit not exceeding USD 20 million up to a maximum period of five years for import of capital goods.

Further, the contract period of 15 months has been reduced to 6 months for all trade credits.

Export/Import of goods and software

Third party payments for export/import transactions

A.P. (DIR Series) Circular No. 70 dated November 8, 2013

In view of the evolving international trade practices, the RBI liberalised the Export/Import Regulations to permit payments for exports/imports to be received from or paid to third parties. This facility is subject to specified conditions, key conditions being summarised below:

- *In case of receipt of proceeds of export of goods/software from third parties*
  - Firm irrevocable order backed by a tripartite agreement should be in place; and
  - The exporter should declare the third party remittance in the Export Declaration Form.
- *In case of payment for import of goods to be made to third parties*
  - The amount of import transaction should not exceed USD 100,000;
  - Firm irrevocable order backed by a tripartite agreement should be in place;
  - Bill of Entry and Invoice should contain a narration that the related payment has to be made to the (named) third party; and
  - Bill of Entry should mention the name of the shipper.

Third party payment should come from/be made to a FATF compliant country and through the banking channel only.

Overseas Direct Investments (ODIs)

Reduction in ceiling

A.P. (DIR Series) Circular No. 30 dated September 4, 2013

The RBI had reduced the ceiling for ODI from 400% to 100% of net worth of the Indian Party. The RBI has issued various clarifications with respect to this recent amendment.

Please refer our news flash *Overseas Direct Investments ('ODI') – Clarification with respect to revised guidelines* for insights.

Others

Clarification on Liberalised Remittance Scheme (LRS) for Resident Individuals

A.P. (DIR Series) Circular No. 32 dated September 4, 2013

The RBI had reduced the monetary limit of remittance under Liberalised Remittance Scheme (LRS) window from USD 200,000 per financial year to USD 75,000 per financial year. Further, the facility of acquisition of immovable property, directly or indirectly, outside India under LRS was withdrawn.

The RBI has issued various clarifications with respect to recent amendments made to the LSR scheme.

Please refer our news flash *Liberalised Remittance Scheme – Clarification with respect to revised guidelines* for insights.

Export and Import of Currency Notes

A.P. (DIR Series) Circular No. 39 dated September 6, 2013

The limit for any person resident in India taking outside India or having gone out of India on a temporary visit, bringing into India (other than to and from Nepal and Bhutan), currency notes has been increased from INR 7,500 per person to INR 10,000 per person.

Financial Services

RBI:

Filing of records of equitable mortgages with the Central Registry

(RBI/2013-14/369 DNBS.(PD).CC.No.360 /03.10.001/2013-14) dated 12 November 2013

All NBFCs are advised to file and register the records of all equitable mortgages created in their favour on or after 31 March, 2011 with the Central Registry and they shall also register the records with the Central Registry as and when equitable mortgages are created in their favour. NBFCs are encouraged to register the same in order to prevent potential fraud / multiple financing against the same property.

Migration of Post-dated cheques/Equated Monthly Installment Cheques to Electronic Clearing Service (Debit)

(RBI/2013-14/359 DNBS. PD/ CC.NO.359 /03.10.001/2013-14) dated 6 Nov 2013

All NBFCs have been advised to migrate towards accepting only CTS-2010 standard cheques and avoid accepting fresh/ additional Post Dated Cheques (PDC)/Equated Monthly Installment (EMI) cheques (either in old format or new CTS-2010 format) in locations where the facility of ECS/RECS (Debit) is available. The existing PDCs/EMI cheques in such locations may be converted into ECS/RECS (Debit) by obtaining fresh ECS (Debit) mandates. This exercise shall be completed on or before 31 December 2013.

Marginal Standing Facility-Revision in timings

(RBI/2013-14/351 FMD.MOAG. No. 93/01.18.001/2013-14) dated 29 Oct 2013

As announced in the Second Quarter Review of the Monetary Policy 2013-14, available times for the Marginal Standing Facility (MSF) have been revised. The MSF will now be available between 7.00 pm and 7.30 pm instead of the existing time of 4.45 pm to 5.15 pm.

Bank Rate, Standing Liquid Facilities, Liquidity Adjustment Facility

(RBI/2013-14/345 DBOD.No.Ret.BC. 64/12.01.001/2013-14) (RBI/2013-14/343 MPD. No.BC. 370/07.01.279/2013-14) dated 29 Oct 2013

As announced in the Second Quarter Review of Monetary Policy 2013-14, the Bank Rate stands adjusted by 25 basis points from 9.0% to 8.75% with effect from October 29, 2013. All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised. Also, the repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 25 basis points from 7.50% to 7.75%. Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF will stand automatically adjusted to 6.75% with immediate effect.

Relaxations in Branch Authorisation Policy

(RBI/2013-14/330 DBOD.No.BAPD.BC. 60/22.01.001/2013-14) dated 21 Oct 2013

All domestic scheduled commercial banks (other than RRBs) are permitted to open branches in Tier 1 to Tier 6 centres without having the need to take permission from RBI in each case, subject to reporting. The reporting requirements and indicative examples are detailed out in the circular.

Launch of new Real-time gross settlement system

(RBI/2013-14/324 DPSS (CO) RTGS No.801/04.04.017/2013-14) dated 11 Oct 2013

The new Real-time gross settlement (RTGS) system is operational with effect from 19 Oct 2013 and the "RTGS System Regulations 2013" have come into effect from this date. Accordingly, the RTGS (Membership) Business Operating Guidelines, 2004 and RTGS (Membership) Regulations, 2004 will be redundant.

Export Credit in foreign currency

(RBI/2013-14/291 DBOD.Dir.BC.No. 57 /04.02.001/2013-14) dated 25 Sep 2013

Banks are advised that they may compute the overall export credit limits of the borrowers on an on-going basis say monthly, based on the prevalent position of current assets, current liabilities and exchange rates and re-allocate limit towards export credit in foreign currency, as per the bank's own policy. This may result in increasing or decreasing the Indian Rupee equivalent of foreign currency component of export credit.

Alternatively, banks may denominate foreign currency (FC) component of export credit in foreign currency only with a view to ensuring that the exporters are insulated from Rupee fluctuations. The FC component of export credit, sanctioned, disbursed and outstanding will be maintained and monitored in FC. However, for translation of FC assets in the banks' book, the on-going exchange/Foreign Exchange Dealers' Association of India (FEDAI) rates may be used.

Lending against security of single product – Gold Jewellery

(RBI/2013-14/260 DNBS. CC.PD.No.356 /03.10.01/2013-14) dated 16 Sep 2013

The RBI has accepted a few recommendations made by the 'Working Group to Study the Issues Related to Gold Imports and Gold Loans by NBFCs in India' related to NBFCs ending against the collateral of gold jewellery

i. *Appropriate Infrastructure for the Storage of Gold Ornaments*

A minimum level of physical infrastructure and facilities should be available including a safe deposit vault and appropriate security measures for operating the vault to ensure safety of the gold and borrower convenience.

ii. *Prior approval of the RBI for Opening Branches in Excess of 1000 in Number*

NBFCs need to take prior RBI approval if their branches exceed 1000. Also, NBFCs which already have more than 1000 branches may approach RBI for prior approval for any further branch expansion. Besides, no new branches will be allowed to be opened without the facilities for storage of gold jewellery and minimum security facilities for the pledged gold jewellery.

iii. *Standardisation of Value of Gold in arriving at Loan-to-Value Ratio*

Gold jewellery accepted as collateral will have to be valued at the average of the closing price of 22 carat gold for the preceding 30 days as quoted by The Bombay Bullion Association Ltd. (BBA). While accepting the gold as collateral, the NBFC should give in writing to the borrower, on their letter head giving the purity (in terms of carats) and weight of the gold. If the gold is of purity less than 22 carats, the NBFC should translate the collateral into 22 carat and state the exact grams of the collateral. It is reiterated that the Loan-to-value (LTV) Ratio for loans against jewellery continues to be at 60%.

iv. Verification of the ownership of Gold

It has been decided that where the gold jewellery pledged by a borrower at any one time or cumulatively on loan outstanding is more than 20 grams, NBFCs must keep record of the verification of the ownership of the jewellery. The method of establishing ownership should be laid down as a Board approved policy.

v. Auction Process and Procedures

The auction should be conducted in the same town or taluka in which the branch that has extended the loan is located. While auctioning the gold the NBFC should declare a reserve price for the pledged ornaments. The reserve price for the pledged ornaments should not be less than 85% of the previous 30 day average closing price of 22 carat gold as declared by the BBA and value of the jewellery of lower purity in terms of carats should be proportionately reduced.

vi. Other instructions

High value loans of INR 0.1 million and above must be disbursed by cheque only. NBFCs financing against the collateral of gold must insist on a copy of the PAN Card of the borrower for all transaction above INR 0.5 millions. NBFCs shall not issue misleading advertisements like claiming the availability of loans in a matter of 2-3 minutes.

Cash withdrawal at Point of Sale - Prepaid Payment Instruments issued by banks

(RBI/2013-14/231 DPSS.CO.PD. No.563/02.14.003/2013-14) dated 5 Sep 2013

It has been decided that the facility of cash withdrawal at Point of Sale (POS) with debit cards may be extended to the open system prepaid payment instruments issued by banks in India. The limit of cash withdrawal will remain INR 1000/- per day subject to the same conditions as applicable hitherto to debit cards.

Returns to be submitted by NBFCs - introduction of 'Branch info' return

(RBI/2013-14/219 DNBS (PD). CC.No. 355/03.02.02/2013-14) dated 3 Sep 2013

With a view to capturing the reach and geographical spread of NBFCs, it is considered necessary to create a comprehensive database of branches of NBFCs and update the same on an ongoing basis. Further, it has been decided to capture branch details of the NBFCs such as name, address, date of opening, closure etc. as per the 'Branch Info' return hosted on the website https://cosmos.rbi.org.in under the menu 'Download blank form'. The Return is also available in the Bank website www.rbi.org.in> Sitemap > NBFC list > Forms/Returns. All deposit taking NBFCs and all Non-deposit taking NBFCs having total assets more than INR 500 millions are advised as under:

a) Submit within one month from the date of this circular, information in respect of all their branches functioning as on June 30, 2013

b) Thereafter, update on a quarterly basis, the details of the branches opened/ closed during the calendar quarter. Such updation will be done within 10 days of the calendar quarter to which the information relates.

With the introduction of the new return, all public deposit accepting NBFCs need not submit the data pertaining to Branch details in NBS-1 from the return for September 2013 onwards.

Recognising on-line Aadhaar authentication (electronic verification process) to be accepted as an 'Officially Valid Document' under PML Rules

(RBI/2013-14/209 DBOD. AML.BC.No.44/14.01.001/ 2013-14) dated 2 Sep 2013

- In order to reduce the risk of identity fraud, document forgery and have paperless Know Your Customer (KYC) verification, Unique Identification Authority of India (UIDAI) has launched its e-KYC service. Accordingly, it has been decided to accept e-KYC service as a valid process for KYC verification under the Prevention of Money Laundering (PML) (Maintenance of Records) Rules, 2005.
- Further, the information containing demographic details and photographs made available from UIDAI as a result of e-KYC process may be treated as an 'Officially Valid Document' under PML Rules.
- In this connection, it is advised that while using e-KYC service of UIDAI, the individual user has to authorize the UIDAI, by explicit consent, to release her or his identity/ address through biometric authentication to the bank branches/business correspondents (BCs). The UIDAI then transfers the data of the individual comprising name, age, gender, and photograph of the individual, electronically to the bank/BCs, which may be accepted as valid process for KYC verification.

Recent Alerts

To download the PDFs of any of these alerts, please go to
http://www.pwc.in/services/tax/news_alert/2013/pwc-newsalert-2013.jhtml

Date	Name	Subject Line
30 October, 2013	Article published in BNA Bloomberg	Indian chapter in the form of country response to the issue relating to Organisation for Economic Co-operation Development's white paper on transfer pricing documentation
28 October, 2013	Poompuhar Shipping Corporation Ltd. *v.* ITO; West Asia Maritime Ltd. *v.* ITO; and Asst Director of Income-Tax *v.* Poompuhar Shipping Corporation [TS-528-HC-2013(Mad)]	Time charter and bare boat charter-cum-demise hire charges held as payment for 'use of ship' covered within meaning of 'royalty' – term 'equipment' includes ship
28 October, 2013	US Technology Resources Pvt. Ltd. *v.* ACIT [ITA No.222/Coch/2013, AY 2007-08, ITAT-Cochin]	Payment made under a management service agreement is covered within the expression 'fees for included services' – hence taxable and subject to withholding tax under section 195
24 October 2013	Safe Harbours	Can they calm the troubled waters for captive service providers for MNCs in India?
21 October 2013	Credit Lyonnais *v.* ADIT (International Taxation) Rg-1 [ITA No.1935/Mum/2007, and ITA No.2032/Mum/2007, Assessment Year 2002-03] and [ITA No.2401/Mum/2009, ITA No.2384/Mum/2009 andC.O.No.205/Mum/2009 for Assessment Year 2003-04]	Borrower's credit analysis core to loan decision - Tribunal upholds profit attribution to PEs of banks @ 20% of fee component
17 October 2013	Cairn UK Holdings Ltd *v.* DIT [2013] 38 taxmann.com 179 (Delhi)	Long-term capital gains on transfer of listed securities by a non-resident in an off-market transaction to be taxed at 10%
11 October 2013	TP.Taxsutra.com	Tribunal ruling on Sogo Shosha companies - Relevance of Berry Ratio not considered
11 October 2013	SEBI Press Release No. 101/2013,	SEBI releases Draft REIT Regulations
30 September 2013	Notification No. 74/2013 (F. No. 503/1/2009-FTD-II) dated 20 September 2013	Protocol to India-Australia Tax Treaty
27 September 2013	Notification No. 75 dated: 23/9/2013	Rules on application of GAAR Provisions Notified by Government of India
26 September 2013	Temasek Holdings Advisors India Pvt. Ltd. *v.* DCIT [2013-TII-163-ITAT-MUM-INTL]	Reimbursement of salary costs under secondment agreement not FTS; services rendered by seconded employees do not constitute a Service PE
19 September 2013	M/s Whirlpool of India Ltd *v.* Regional PF Commissioner [W.P.(C.) 7729/1999] dated 22.07.2013 (Delhi HC)	For provident fund contributions, canteen allowance paid to all permanent employees of a company to be included as part of basic wages
19 September 2013	Safe Harbour	Tax Experts' react to final Safe Harbour Rules
17 September 2013	ITO *v.* M/s Zinger Investments (P) Ltd [TS-437-ITAT-2013(Hyd)]	Transfer of business without monetary consideration not taxable as 'slump sale' under section 50B read with section 2(42C) of the Act
13 September 2013	3i Infotech Ltd. *v.* ACIT [TS-417-ITAT-2013(Mum)]	Compensation for takeover of key employees on contract cancellation is a capital receipt
12 September 2013	A.P. (DIR Series) Circular No. 32 dated September 4, 2013	Liberalised Remittance Scheme - Clarification with respect to revised guidelines
10 September 2013	Green Infra Ltd. *v.* ITO [TS-420-ITAT-2013(Mum)]	Share allotment at premium by a newly incorporated Company is neither sham nor income
10 September 2013	Genesis Indian Investment Company Ltd. *v.* CIT(A) [TS-405-ITAT-2013 (Mum)]	Interest received for delay in completion of the process of buy-back of shares under open offer to be treated as capital gains and not interest income
6 September, 2013	A.P. (DIR Series) Circular No. 30 dated September 4, 2013	Overseas Direct Investments ('ODI') – Clarification with respect to revised guidelines
5 September, 2013	A.P. (DIR Series) Circular No. 31 dated September 4, 2013	External Commercial Borrowings - end use liberalisation – general corporate purposes
3 September, 2013	HO No. IWU/7(10)2008/Hungary/9829 dated 29/08/2013	Agreement on social security with the Republic of Hungary comes into force on 1 April 2013

Glossary

AE	Associated enterprise
ALP	Arm's length price
AY	Assessment year
CBDT	Central Board of Direct Taxes
CENVAT	Central value added tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CIT(A)	Commissioner of Income-tax (Appeals)
DRP	Dispute Resolution Panel
FTS	Fees for technical services
FY	Financial year
HC	High Court
PE	Permanent Establishment
RBI	The Reserve Bank of India
SAD	Special Additional Duty of Customs
SC	Supreme Court
SEBI	The Securities and Exchange Board of India
The Act	The Income-tax Act, 1961
The tax treaty	Double Taxation Avoidance Agreement
The Tribunal	The Income-tax Appellate Tribunal
TO	Tax officer
TPO	Transfer pricing officer
VAT	Value added tax

About PwC

PwC helps organisations and individuals create the value they're looking for. We're a network of firms in 157 countries with more than 184,000 people who are committed to delivering quality in Assurance, Tax and Advisory services. Tell us what matters to you and find out more by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit www.pwc.com/in

PwC refers to the PwC network and / or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

You can connect with us on:

facebook.com/PwCIndia

twitter.com/PwC_IN

linkedin.com/company/pwc-india

youtube.com/pwc

You can also write to us at
pwctrs.knowledgemanagement@in.pwc.com

Our Offices

Ahmedabad
President Plaza, 1st Floor
Plot No. 36, Opposite Muktidham Derasar
Thaltej Cross Roads, S G Highway
Ahmedabad 380054
Phone: +91 79 3091 7000

Bangalore
6th Floor,Tower 'D',The Millenia
1 & 2 Murphy road,Ulsoor
Bangalore 560008
Phone: +91 80 40796000

Chennai
8th Floor, Prestige Palladium Bayan
129-140 Greams Road,
Chennai 600 006, India
Phone: +91 444228 500

Hyderabad
8-2-293/82/A/113A
Road No.36, Jubilee Hills
Hyderabad 500 034
Phone: +91 40 6624 6600

Kolkata
56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake.
Kolkata - 700 091, West Bengal, India
Phone: +91-033 - 2357 9101/4400 1111

Mumbai
PwC House, Plot No.18/A
Gurunanak Road (Station Road)
Bandra (West)
Mumbai 400 050
Phone: +91 22 6689 1000

New Delhi /Gurgaon
Building 10, 17th Floor
Tower -C, DLF Cyber City
Gurgaon 122002
Phone: +91 124 330 6000

Pune
GF-02, Tower C
Panchshil Tech Park
Don Bosco School Road
Yerwada, Pune - 411 006
Phone: +91 20 4100 4444

pwc.in

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.
© 2013 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.

NJ 133 - December 2013 Spectrum-Oct-Nov.indd
Designed by Brand and Communication, India