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Editorial

We are delighted to present another issue of India Spectrum.

The new Finance Minister (FM), Mr. P. Chidambaram has taken immediate steps to revive the economy and reassure foreign investors by drawing up a fresh plan on fiscal consolidation and finetuning policies. As per reports, the FM proposes to rework the Direct Taxes Code (DTC) Bill in view of controversies arising out of proposals like General Anti-Avoidance Rule. Hence, it is expected that the DTC may not be rolled out from 1 April 2013. Similarly, in sync with investor sentiments, Shome Committee has recommended deferral of General Anti Avoidance Rules (GAAR) by three years amongst a few other comforting measures.

On the global front, discussions were held between the German foreign minister and their Greek counterpart to determine whether or not Greece would continue to be a part of the 17-nation Euro zone and whether an extension would be granted to Greece to bail itself out of the crisis. In Japan, the export of overseas shipments to the European Union fell by more than expected as the sovereign debt crisis in the Euro zone continued.

On the Indian economic front, the index of industrial production declined to 1.8% in June 2012 from 2.4% in the previous month, and displayed a sharp decline from 8.8% a year ago. India's growth also hit a nine-year low of 5.3% in the first quarter of 2012 due to political hold-ups on key reforms, high interest rates and global economic uncertainty. While the Reserve Bank of India (RBI) has cut the growth forecast for the ongoing financial year to 6.5%, rating agency CRISIL has been more conservative in its growth forecast of 5.5%.

Ketan Dalal

Shyamal Mukherjee

To stem the currency decline and with a view to provide operational flexibility/convenience, the RBI has now permitted to resident foreign currency (RFC)/exchange earners foreign currency (EEFC)/diamond dollar account (DDA) account holders to receive 100% credit of forex earnings in their respective foreign currency accounts in India while requiring conversion of all foreign currency receipts into INR on a monthly basis.

The Supreme Court (SC) held in the case of the Columbia Sportswear Company that the rulings of the Authority for Advance Rulings can be challenged by way of a writ before the High Court. However, if a substantial question of general importance is involved, or a similar question is already pending before the SC, the petitioner can challenge the ruling by making a special leave petition directly with the SC. The SC also held that the AAR must be bound by its earlier rulings.

In a recent decision in the case of Smifs Securities Ltd, the SC held that goodwill acquired in the process of amalgamation, would be in the nature of 'any other business or commercial rights of similar nature' under section 32(1), and hence would be an intangible asset eligible for depreciation.

In another ruling in the case of Maral Overseas Ltd., the Indore Bench of the Tribunal held that a tax holiday under section 10B of the Income-tax Act, 1961 is available to a new unit having substantial investment, independent infrastructure and identifiable output, and which can be treated as a separate industrial undertaking and not an expansion of an existing unit. Please refer to page 10 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

Fees for technical services

FTS received by a non-resident from another non-resident for rendering seismic data processing services eligible for presumptive taxation

An Indian company (namely ONGC) had awarded a seismic survey contract to UAE company which in turn had sub-contracted the work of processing of seismic data to the applicant, UK resident.

The applicant sought an advance ruling from the Authority for Advance Rulings (the AAR) to determine whether such income would be taxable as fees for technical services (FTS) under section 9(1)(vii) of the Income-tax Act, 1961 (the Act) or under the provisions of section 44BB of the Act. Before the AAR, the applicant contended that, the services, though technical in nature, were rendered in connection with oil exploration and were covered by the exception contained in Explanation (2) to section 9(1)(vii) of the Act and hence not taxable as FTS. It further contended that since section 44BB of the Act is a specific provision for computing profits for services rendered in connection with prospecting of mineral oils, its income would be taxable under the provisions of section 44BB(1) of the Act.

The Revenue contended that seismic data processing services are technical in nature and taxable as FTS under section 9(1)(vii) of the Act. The applicant was not doing any mining or like activities, and hence the exception contained in Explanation (2) to section 9(1)(vii) of the Act was not applicable. Also, as the applicant was a sub-contractor and had not undertaken the project itself, the provisions of section 44BB(1) of the Act were not applicable.

The AAR observed that the exception to Explanation 2 to section 9(1)(vii) of the Act covers 'income derived from mining and like activities' whereas the provisions of section 44BB(1) of the Act apply to services provided 'in connection with prospecting/extraction of mineral oil'.

Since the applicant itself had disclosed that it was providing services 'in connection with oil prospection', the assessee was not covered by the exception to Explanation 2 to section 9(1)(vii) of the Act and thus the consideration received was to be treated as FTS under section 9(1)(vii) of the Act.

However, in terms of the proviso to section 44BB(1) of the Act, where technical services are rendered in connection with mining activity, they would not be eligible to be assessed under section 44BB(1) of the Act only if they come within the specific sections such as 44D, 44DA or section 115A of the Act. However, these specific sections only cover FTS received from Government or an Indian concern. Since the applicant had received the FTS from a UAE company, it would be excluded from the specific provisions and was entitled to be assessed under section 44BB(1) of the Act.

Spectrum Geo Ltd. *v.* DIT(IT) [TS-587-AAR-2012]

Education cess

Education cess is 'additional surcharge' included in income tax for tax treaty rate purposes

The assessee, a tax resident of Singapore, had earned interest and royalty income in India, which was taxed according to the rates specified by the Double Taxation Avoidance Agreement between India and Singapore (tax treaty). While applying the rates under the tax treaty, surcharge and education cess were not considered.

During the course of assessment proceedings, the tax officer (TO) levied surcharge and education cess on the tax liability computed by the assessee. On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] partly upheld the TO's order and held that there was no specific provision in the India-Singapore tax treaty or anywhere else that cess would not be charged. Therefore, education cess had been rightly levied.

The Income-tax Appellate Tribunal (Tribunal) observed that the

expression 'tax' was defined by Article 2(1) of tax treaty to include 'income tax'. The expression income-tax includes surcharge in the case of India. Furthermore, Article 2(2) of the tax treaty extends the scope of the tax so as to cover "any identical or substantially similar taxes that are imposed after the date of signature of the agreement in addition to, or in place of, the taxes referred to in Article 2(1).

It was held that education cess which was introduced in 2004, after the signing of the tax treaty, is also in the nature of 'additional surcharge'. Thus, it is covered under the scope of Article 2 of the tax treaty. Accordingly, Articles 11 and 12 of the tax treaty override the provisions of the Act and restrict the taxability for 'income tax or additional surcharge' at the rate specified in the respective article.

Therefore, the Tribunal upheld the claim of the assessee and concluded that the scope of Article 2 of the tax treaty also extends to 'education cess' which restricts the taxability at the rates specified in the tax treaty.

DIC Asia Pacific Pte Ltd. *v.* ADIT [TS-443-ITAT-2012 (Kol)]

Capital gains

Whole of the share capital held by holding company is not the same as whole of the share capital held in name of the holding company

The assessee had transferred certain shares of another company to its 100% subsidiary and claimed exemption in terms of the provisions of section 47(iv) of the Act. The TO rejected the claim, holding that section 47(iv) of the Act requires that the 'whole of the share capital' of the subsidiary is to be held by the assessee. In this case, out of the total shares issued and subscribed, two shares were held by the directors of the assessee company.

The Tribunal stated that under the provisions of the Companies Act, 1956 (the Companies Act) it is not possible for the assessee company to have less than two members. Section 47(iv) of the Act requires the whole of the share capital of the subsidiary to be held by the holding company. The whole of the share capital being held by the holding company is certainly not the same as the whole of share capital being held in the name of the holding company. If 'whole of the share capital' is interpreted in such a literal sense, it would defeat the purpose of the provision. The director held the shares only in a fiduciary capacity and the beneficial ownership of the assessee was not in doubt. Hence, the Tribunal held that the transaction would be covered by the exemption available under section 47(iv) of the Act.

On further appeal, the High Court (HC) held that the Tribunal was justified in allowing exemption under section 47(iv) of the Act since the share capital which is held by the holding company cannot be considered as the share capital held in name of the holding company.

ACIT *v.* Papillon Investments Pvt. Ltd. [2012] 206 Taxman 142 (Bom)

Transfer of depreciable buildings are liable to deemed valuation under stamp-duty regulations

During FY 2005-06, the assessee sold a flat on which it had claimed depreciation under section 32 of the Act and computed capital gains under section 50 of the Act after taking sale value as full value of consideration. The TO, however, invoked the provisions of section 50C of the Act and recomputed capital gains by taking stamp-duty valuation of the flat as the full value of consideration on the basis that section 50C of the Act is applicable to all capital assets, irrespective of whether these are depreciable or not.

On appeal, the Tribunal held that section 50 of the Act applies to the cost of acquisition in the case of depreciable assets while section 50C of the Act operates in a different field and applies only to the full value of consideration of

land and building. In the absence of any specific provision, a harmonious interpretation makes it clear that section 50C of the Act applies to cases covered by section 50. Furthermore, section 50C does not distinguish between depreciable assets and non-depreciable assets.

The Tribunal also relied on the decision of the Special Bench of the Mumbai Tribunal in United Marine Academy [TS-171-ITAT-2011(Mum)] and the SC decision in Common Wealth Trust Ltd [1997] 228 ITR 1 (SC), in which it was held that the provisions of section 50 of the Act are applicable to transfer of depreciable assets covered by section 50 of the Act.

Accordingly, the Tribunal concluded that section 50C of the Act was also applicable to transfer of depreciable assets covered by section 50 of the Act.

ACIT *v.* ETC Industries Ltd

[TS-340-ITAT-2012 (Ind)]

Tax withholding

Payment to seconded employees taxable in India where right to terminate the employment does not lie with the payer

The assessee, an Indian company, is a wholly owned subsidiary of a US company. During the year, it entered into an agreement with its parent in respect of secondment of certain employees to India. The employees continued to be on the payroll of the parent company. The assessee was to reimburse the amount of salary alongwith a mark-up for payroll processing charges to the parent company.

Under the secondment agreement, the assessee-payer was responsible for the risks and work undertaken by the secondees. The assessee had a right to reject the 'secondment' of any employee at any time, however, the parent company had a right to reject the 'employment' of a secondee with prior consultation of the assessee.

The assessee made an application before the AAR seeking a ruling on the taxability of the amount paid to the parent company. It contended that it was merely a case of reimbursement of salary and there was employer-employee relationship between the assessee and the employees. Hence, it cannot be regarded as fees for technical services under the Act or the India-US tax treaty.

The Revenue contended that the salary and other benefits were to be paid by the parent company and right to terminate the employment was also with the parent company, Hence, the secondees continued to be employees of the parent company. Further, it contended that the payment was taxable as FTS or alternatively, the employees constitute a service PE in India and hence, the payment was taxable as business income.

The AAR noted that the payment made to the parent company was towards for the salary of the seconded employees. It was held that in order to establish the employer-employee relationship, the right to terminate the employment should rest with the payer. It was clear from the secondment agreement, that the assessee had only right to 'terminate the secondment' but not the 'employment' of the secondees.

Therefore, the AAR held that the payment was not in the nature of reimbursement and hence, was taxable in India. Furthermore, since the assessee had not sought a ruling on the characterisation of the payment before the AAR, it was held that the assessee was liable to withhold tax on such payment under section 195 of the Act subject to final adjudication on chargeability by the assessing authority.

Target Corporation India (P) Ltd, *In re* [2012] 24 Taxmann.com 152 (AAR)

Air freight paid to foreign airline through Indian agents not liable to tax withholding

The assessee, a manufacturer and exporter of leather products, had paid air freight to Indian agents of a foreign airline without withholding tax. The assessee relied on CBDT Circular No 723 which lays down that no taxes are

required to be withheld under section 194C of the Act on payments made to agents of foreign shipping companies.

The TO disallowed the air freight under section 40(a)(ia) of the Act on the basis that tax was required to be withheld under section 194C of the Act on this payment since Circular 723 specifically applies to foreign shipping companies and such benefit cannot be extended to foreign airlines. It further held that the assessee was under an obligation to make an application under section 195(2) of the Act, requesting the TO determine whether tax was deductible from the foreign remittance. The CIT(A) upheld the order of the TO.

The Tribunal reversed the order of the TO and held that the resident companies acted merely as agents of the respective airlines and had not received the air freight payment in their own right.

Reference was also made to the tax treaties which provide that profits from operation of ships and aircrafts in international traffic were taxable only in the state in which the respective enterprise has a place of effective management and not in the source state.

In relation to the issue of making application under section 195(2), the Tribunal referred to the case of GE India Technology Centre Pvt. Ltd *v.* CIT [2010] 327 ITR 456 (SC), where it was held that a person responsible for withholding tax can themselves determine whether tax was deductible at source and what the amount of deduction should be. It is not mandatory for them to make an application under section 195(2) of the Act. The Tribunal held that withholding tax under section 195 was applicable only where income of the non-resident company was taxable in India. Hence, there was no obligation on the assessee to make an application under section 195(2) of the Act.

Since the income of the foreign airlines was not taxable in India, the Tribunal concluded that the air freight paid to agents of foreign airlines was not liable to tax withholding either under section 194C or under section 195 of the Act.

Taj Leather Works *v.* ACIT [TS-378-ITAT-2012 (Kol)]

Goods sold to a super stockist for onward sales cannot be subject to tax withholding under section 194J of the Act in the absence of a principal-agent relationship

The assessee, a drug manufacturer and trader, had appointed Z as its super stockist for onward sale of its products in the open market. The drugs purchased from the assessee were sold by Z after earning a remuneration of 10% of the maximum retail price (MRP).

The TO treated the super stockist as a manager of the assessee who was paid a turnover-based incentive and held that there was a principal-agent relationship between the assessee and Z. Hence, it held that the assessee was required to withhold tax under section 194J of the Act. The CIT(A) upheld the order of the TO.

On appeal to the Tribunal, the assessee contended that it had not made any payment to Z by way of remuneration. Rather, Z had purchased products from the assessee on a principal-to-principal basis and the assessee had no control over the activities of Z regarding sale of the products. Hence, it cannot be said that there was a principal-agent relation between the assessee and Z. Thus, the tax withholding provisions of section 194J of the Act are not applicable in its case.

On perusal of the assessee's agreement with Z, the Tribunal observed that the relationship between the parties was on a principal-to-principal basis and at no point in time Z was the agent of the assessee. Hence, Z Ltd could not be held as an employee, agent, legal representative or partner of the assessee for any purpose. Accordingly, since there was no payment for professional services by the assessee to Z Ltd, the provisions of section 194J of the Act cannot be applied.

Piramal Healthcare Ltd. *v.* ACIT [TS-311-ITAT-2012 (Mum)]

Tax holiday

Extension of tax holiday period available to existing unit if amendment enacted during unexpired period

New unit distinct and independent from an existing unit entitled to tax holiday

The assessee company is engaged in the manufacture and export of cotton fabrics and readymade garments. It started commercial production in the assessment year (AY) 1992-93. However, on account of losses incurred for the initial AYs, it claimed deduction under section 10B of the Act for the first time in AY 1995-96, which was admissible for a period of five years i.e. till AY 1999-2000. During the tenure of tax holiday period, the law was changed and tax holiday period was extended to 10 years. The assessee claimed that the change in law would be applicable to it and that extended tax holiday period would be available to it. It also claimed deduction under section 10B of the Act for two new business units set up during AY 1996-97 and AY 1999-2000 respectively.

During AYs 2001-02 and 2002-03, the TO denied the benefit under section 10B of the Act on the following grounds:

- The original unit was not eligible for deduction under section 10B of the Act beyond the five-year period
- The new units were merely expansion of the original unit and not independent units

The CIT(A), after analysing the provisions of section 10B of the Act, allowed the deduction under section 10B of the Act for all the units.

The Tribunal observed that in the case of CIT *v.* DSL Software Ltd [TS-665-HC-2011 (Kar)], it was held that where the tax holiday period of ten consecutive years from the date of production has not expired, before the amendment extending such period, the assessee would be entitled to the benefit of the extended period of exemption. Thus, the assessee would be eligible to claim the deduction under section 10B of the Act for the extended period of ten years in respect of the first unit.

The Tribunal further observed that the two new units were set up by making substantial investment in new buildings and plant and machinery, wherein distinct and marketable products were manufactured and the profits attributable to such units could be determined independently.

The Tribunal relied on the decision in the case of Textile Machinery Corporation Ltd. *v.* CIT [1977] 107 ITR 195 (SC), where it was held that the true test for classifying a unit as independent was to check whether such unit was a new and identifiable undertaking, separate and distinct from the existing business. Thus, the Tribunal held that the two new units were independent production units and hence entitled to claim deduction under section 10B of the Act.

Maral Overseas Ltd. *v.* ACIT [TS-288-ITAT-2012 (Indore)]

Depreciation

Goodwill acquired in the process of amalgamation is an intangible asset eligible for depreciation

Under an amalgamation of Y into the assessee company, all the assets and liabilities of Y were transferred to the assessee. The assessee treated the difference in the consideration paid over the book value of net assets acquired as 'goodwill' and claimed depreciation on the goodwill under section 32(1) of the Act. The assessee treated the goodwill as an intangible asset in terms of Explanation 3(b) to section 32(1) of the Act.

The TO disallowed the depreciation on the basis that 'goodwill' is not an 'asset' in terms of the provisions of section 32(1) of the Act and hence not eligible for depreciation. In this case, the TO came to a conclusion that no amount was paid for goodwill. In further appeals, the assessee's claim of depreciation was allowed. The Tribunal upheld the

finding of fact by the CIT(A) that the assessee company had acquired a capital right in the form of goodwill. The Revenue's appeal to the HC, and to the SC, did not contest the above finding of fact, and only raised the question as to whether goodwill is an asset eligible for depreciation under section 32 of the Act.

The Supreme Court (SC) held that the expression 'goodwill' is covered within the expression 'any other business or commercial rights of a similar nature', and hence, it is an intangible asset eligible for depreciation under section 32 of the Act.

CIT *v.* Smifs Securities Ltd. [TS-639-SC-2012]

Development expenditure creating a commercial right is an intangible asset eligible for depreciation

The assessee was engaged in the manufacture of automobile parts and components. The assessee had paid development fees and development charges to Fujitsu Micro Electronics Asia Pvt Ltd (Fujitsu) for development of flash microcontroller unit and liquid crystal display, which was a basic component required to manufacture speedometer assembly.

The assessee claimed the amount paid as revenue expenditure even though it treated it as a capital expenditure it in its books of account. The TO considered the payment in the nature of acquiring a capital asset and did not allow depreciation as no asset was added to the block of plant and machinery.

The CIT(A) reversed the order of the TO on the basis that the assessee was entitled to receive royalty on the sale of components. Thus, it created an intangible asset in the form of intellectual property right, which was eligible for depreciation.

The Tribunal upheld the order of the CIT(A). Furthermore, it held that although only Fujitsu could supply the components to the assessee, an intangible asset was created on which the assessee had a control since it could give the assessee an income in the nature of royalty. The assessee had itself capitalised the payment in its books of accounts and such a treatment indicated the manner in which the assessee treated the outgoes. Therefore, depreciation was allowable under section 32(1)(ii) of the Act on expenditure creating a commercial right.

ACIT *v.* Pricol Ltd. [TS-433-ITAT-2012 (Chennai)]

Discount on deep discount bond

Discount on a deep discount bond borrowed for construction of house property allowable as a deduction from house property income

The assessee had constructed a house property out of a loan taken from its director. Subsequently, the loan was converted into deep discount bonds (DDBs). The assessee claimed a proportionate amount of the difference between the maturity value and the issue price (discount charges) of the DDB as deduction under section 24(b) of the Act against the rental income earned from the house property. The discount charges were disallowed by the TO. It was observed that discount charges included interest on interest, which was also disallowed relying on the SC decision in the case of Shew Kissen Bhatter *v.* CIT [1973] 89 ITR 61 (SC).

The Tribunal noted that the Central Board of Direct Taxes (CBDT) Circular no. 28 dated 20 August 1969 clarified that interest on fresh loan raised to repay an original loan was eligible for deduction under section 24(b) of the Act. It was observed that DDB is a structured loan where the maturity value is paid only at the end of the redemption period and no interest is payable every year. Relying on the decision of the SC in the case of Madras Industrial

Finance Corporation Ltd. *v.* CIT [1997] 225 ITR 802 (SC), the Tribunal held that the discount charges should be spread over the debenture-holding period and proportionately allowed every year. Such annual proportionate amount was to be treated as 'interest' under section 2(28A) of the Act. With regard to interest on interest, since no interest was payable on a yearly basis, the assessee did not have the liability to pay interest on interest and hence, the decision in the case of Shew Kissen Bhatter *(*above) would not apply. Accordingly, it held that the amount of discount on deep discount bonds was proportionately deductible from the house property income, over the holding period of the bonds.

Litolier Properties Pvt Ltd *v.* CIT [TS-154-ITAT-2012 (Mum)]

Interest on excess refund

As per retrospective amendment, interest leviable on excess refund for assessment completed post 1 June, 2003

The assesee had submitted its tax return for the AY 2001-02 with a claim of tax refund, which was granted to the assessee. Subsequently, the TO passed an assessment order under section 143(3) of the Act and raised a tax demand including interest under section 234D of the Act. The assessee challenged the levy of interest before the Tribunal.

The assessee contended that since the provisions of section 234D of the Act to levy interest on excess refund were introduced by the Finance Act, 2003 with effect from 1 June, 2003, they are applicable only from AY 2004-05.

The Tribunal noted that divergent views were expressed by judicial authorities on levy of interest on excess refund under section 234D of the Act on assessments completed post AY 2004-05. The decisions in the cases of ITO *v.* Ekta Promoters Pvt Ltd. [2008] 113 ITD 719 (Del-SB) and DIT *v.* Jacabs Civil Incorporated [2011] 330 ITR 578 (Del) held that section 234D of the Act is applicable only from AY 2004-05. However, the Madras HC held in the case of CIT *v.* Infrastructure Development Finance Co Ltd [2012] 340 ITR 580 (Mad) that the provisions will apply to cases for which assessment was completed after 1 June, 2003. The latter judgement has now been confirmed by a retrospective amendment by the Finance Act, 2012 to section 234D of the Act.

Hence, it was held that, interest under section 234D of the Act would be leviable for cases where regular assessment was completed after 1 June, 2003.

ITO *v.* Strides Arcolab Ltd. [TS-580-ITAT-2012 (Mum)]

Assessing personal tax
Personal taxes

Salary/perquisite

Case laws

Foreign income received in an overseas bank account in the first instance not to be considered 'received in India' on its onward remittance to an Indian bank account

The assessee lived in the UK for several years. She returned to India in financial year (FY) 2005-06 and sold her house in the UK through an agent. The sale proceeds were transferred to her bank account in the UK and subsequently remitted to India. The assessee qualified as a 'resident but not ordinarily resident' (RNOR) during the relevant tax year. Her assessment for the AY 2006-07 under section 143(3) of the Act was completed on 23 December 2008.

After the completion of the assessment proceedings, the CIT proposed a revision under section 263 of the Act on the basis that the income on sale of property was to be treated as 'received in India' and hence was taxable even in the case of an RNOR assessee.

Aggrieved by the CIT's order, the assessee applied to the Kolkata Tribunal, which observed that section 5(1)(a) of the Act states that in the case of an RNOR, only such income accruing or arising outside India can be brought to tax in India if (i) it is received or is deemed to be received in India in such year by or on behalf of such person, or (ii) it is derived from a business controlled in or a profession set up in India. According to the CIT, the assessee had received the income in India. However, the CIT did not appreciate the fact that it is the place of the first receipt of income which is material for the purposes of applying the test provided in the section 5(1)(i) of the Act. The place of receipt of an income is the place where it is received by the assessee in its character of income. A mere transfer of money from one bank account to another bank account cannot be considered a receipt of income. In the assessee's case the income was received in the UK. Thus, its subsequent remittance to India is wholly irrelevant for tax purposes. Hence, the appeal was allowed in the assessee's favour.

Sarmishtha Mukherjee *v.* ITO [TS-377-ITAT-2012 (Kol)]

Gift of capital gains bonds during lock-in period to be disregarded and capital gains bonds exemption is available

The assessee had invested in capital gains bonds during the year to claim exemption from capital gains. The bonds carried a lock-in period of three years. The assessee gifted the bonds to her husband during the lock-in-period. The bonds gifted were not registered in the assessee's husband's name.

The TO treated the gift as a violation of the conditions prescribed in section 54EC of the Act and denied the exemption. The TO also noted that the maturity proceeds received by the assessee were transferred to the husband's account. Hence, the TO treated the long-term capital gains on the transfer of the original asset as taxable in the year of gift.

Before the Tribunal, it was observed that the bonds were non-negotiable and non-transferable and hence, any 'gift' or 'transfer' was invalid and cannot be recognised. The assessee had offered interest income on maturity from such bonds to tax in her tax return for the year, which was accepted by the TO. Hence, the TO cannot hold that there was a 'transfer' of bonds merely because the amount was transferred to her husband. Hence, the gift of bonds was not regarded as a transfer and the denial of capital gains exemption by TO was reversed.

DCIT *v.* Jayalakshmi [TS-338-ITAT-2012 (Bang)]

Notifications

Notifications/ circulars

Claims of TDS where there is a difference in TDS claimed and according to form 26-AS

The CBDT has recently issued instructions to the effect that where the difference between the TDS claim and matching TDS amount reported in Form 26AS does not exceed INR 5,000, the TDS claim may be accepted without verification and in all other cases, the TDS credit may be allowed after due verification. The earlier instruction no. 01/2012 on this subject has since been withdrawn.

Source: Instruction no. 4 dated 25 May 2012 [F. No.

Structuring for companies
Mergers and acquisitions

Case laws

Grant for protecting parent company's goodwill and image taxable as a 'business receipt'

During FY 1996-97, a company named Boehringer Mannheim India Ltd (BMIL) amalgamated with the assessee. BMIL had received certain payment from its parent company, Boeheringer Mannheim GmbH (BMG) in November 1996, which the assessee claimed as a capital receipt and did not offer to tax.

During the course of assessment proceedings, the assessee stated that the amount received was an unconditional grant by BMG to protect the goodwill of BMG in India and to rectify the erosion in net worth of BMIL. The TO, however, held that the payment was made in lieu of services rendered by BMIL for protecting and promoting the interests of BMG and was therefore taxable as a trading receipt.

On appeal, the Tribunal held that the mere fact that the payment was unconditional does not make it a capital receipt. The Tribunal observed the expenses incurred to protect goodwill had been claimed as revenue expenditure by the assessee. It was further observed that BMIL was using the brand and technical knowhow of BMG and also acting as its marketing agent. Because of this relation and the services rendered by BMIL to protect the interests of BMG, BMG had made the payment to BMIL.

In view of the aforementioned facts and after relying on the SC decision in the case of CIT *v.* G.R. Karthikeyan [1993] 201 ITR 866 (SC), the Tribunal held that payment received by BMIL was connected with the business of BMIL and was therefore taxable as business income under section 28(i) read with section 2(24) of the Act.

ACIT *v.* Nicholas Piramal India Ltd [TS-343-ITAT-2012 (Mum)]

Transfer of shares by the registered shareholder would amount to change in shareholding and hence assessee was not eligible for set-off of losses under section 79

The assessee, an investment company, had incurred a business loss in AY 1998-99 which was brought forward and set-off against its business income of AY 2006-07.

The TO observed that in AY 1998-99, C Ltd, a company holding more than 51% shares of the assessee company, had transferred the assessee company's shares to its director D in his individual capacity, leading to a change in the shareholding pattern of the company in AY 2006-07 as compared to AY 1998-99.

The TO disallowed the set-off of the loss incurred in AY 1998-99 against the income of AY 2006-07 under the provisions of section 79 of the Act.

Before the CIT(A), the assessee contended that D was the beneficial owner of shares of the assessee company held by C Ltd. There was no substantial change in ownership and hence, the provisions of section 79 of the Act were not applicable. However, the CIT(A) upheld the TO's order.

The Tribunal held that a company is a separate legal entity distinct from its shareholders. If the shareholders of the company are treated the same as the company, then the concept of a separate legal entity gets defeated. The concept of beneficial ownership can be invoked only when the investment in shares is held by one person on behalf of another.

Shares of the assessee company were held by C Ltd. on its own behalf, and it was the beneficial as well as the registered owner of shares. Therefore, D cannot be treated as the beneficial owner of the shares held by C Ltd. Hence, the transfer of shares held by C Ltd to D in his individual capacity amounted to a change in the shareholding pattern of the assessee. Accordingly, the Tribunal held that the assessee was not entitled to carry forward and set-off the business loss under section 79 of the Act.

Tainwala Trading and Investments Co Ltd *v.* ACIT [TS-385-ITAT-2012 (Mum)]

SEBI

Different promoter groups cannot be deemed to be persons acting in concert unless they share a common objective or the purpose of substantial acquisition of shares of a target company

The target company (TC) had two promoter groups and there was serious rift between them. The TC converted share warrants held by the promoters into equity shares and one promoter group also acquired shares of the TC from the market. On the conversion of warrants and acquisition from the market, the shareholding of the promoter group increased from 53.36% to 55.18%, which resulted in the triggering of open offer under the Securities Exchange Board of India (SEBI) takeover code.

However, no public announcement was made by the appellants. The SEBI issued a show-cause notice against which the appellants denied that they were persons acting in concert (PAC) within the meaning of the takeover code, on the basis that there was a serious rift between the promoters. It was contended that the co-promoters of the TC cannot be considered PAC.

The Securities Appellate Tribunal (SAT) relying on the decision of the SC in the case of Daiichi Sankyo Co Ltd, observed that there can be no PAC unless they share a common objective or the purpose of substantial acquisition of shares of the TC. The idea of PAC is not about a fortuitous relationship coming into existence by accident or chance. Furthermore, there is sufficient evidence to show that there were disputes between the promoter groups and the onus was on the Board to prove otherwise.

Accordingly, the SAT set aside the order and remanded the matter to the SEBI for passing a fresh order.

Nikhil Mansukhani (SAT order dated 11 May 2012)

Indirect transfer of shares in a TC by way of settlement in a trust pursuant to a family arrangement is exempt from the takeover code

Company R is one of the promoters of the TC and holds 23.08% shares in it. Dr Reddy's family held 83.17% shares in company R. Dr Reddy's family proposed to transfer their holding to a private family trust (in which Dr Reddy's family members are the trustees), by way of gift or settlement.

Subsequent to the transfer, the shareholding of the acquirer (i.e. the trust) along with the PAC would go up to 25.61%, which would result in the triggering of the open offer in light of the takeover code. To obviate from the requirement, an exemption from making the open offer under regulation 11(1) of the takeover code was sought.

The SEBI granted exemption to the acquirer from the requirement of making an open offer on the basis that the transaction took place between the same set of individuals (i.e. the trustees of the family trust and promoters of the TC). Moreover, pursuant to the indirect acquisition, there was no change in the promoter shareholding and in the control or management of the TC.

Dr Reddy's Laboratories Ltd (Exemption order dated 3 May 2012)

Pricing appropriately
Transfer pricing

Case laws

Prelude

The changing nature of the transactions of MNCs and the increasing complexity in intangible property (IP) related issues have increased the strain on traditional principles of international taxation and transfer pricing. Indeed, traditional ways of approaching a company's IP and profit allocation are no longer adequate to take into account changing market dynamics, which require a group to constantly review how it plans, measures, activates and balances the group's managerial, operational and tax needs.

As international tax rules become even more sophisticated to keep pace with a new breed of transactions, multinational enterprises will need to align closely their operational models and tax strategies. In this context, the discussion draft released by the Organisation for Economic Co-operation and Development (OECD) on the revision of Chapter VI, Special Considerations for IP will be seen as a reference point. The discussion draft makes it clear that the traditional fundamentals are up for change. Given India's position on OECD Guidelines, taxpayers and revenue authorities need to gear up accordingly.

A summary of the discussion draft is included below.

OECD: Discussion draft on intangibles

In mid-2010, the OECD announced the launch of a new project focusing on transfer pricing issues involving IP expected to be completed in 2013. In June this year, the OECD published the first draft, inviting the business community to provide its comments and responses by September 2012 to enable a public discussion. The purpose of the proposed Chapter VI is to provide guidance on the determination of arm's length conditions and prices of transactions involving the use of or transfer of intangibles. The discussion draft has been broadly divided into four sections:

- **Identification of intangibles:** The discussion draft stresses that transfer pricing analysis should be based on how independent third parties will behave in comparable situations, rather than on accounting or legal definitions. The discussion draft does not distinguish between trade and marketing, soft and hard, or routine and non-routine intangibles. Instead, the intangibles are intended to address something capable of being owned or controlled for use in commercial activities. Also, the key break-through in this discussion draft is the distinction between intangibles and market conditions or other circumstances incapable of being owned, controlled or transferred by a single enterprise. The draft concludes that legal protection is not a necessary condition for an item to be characterised as an intangible for transfer pricing purposes.
- **Identification of parties entitled to intangibles related returns:** The discussion draft clarifies that not all intangibles are valuable and neither do they deserve a separate compensation or give rise to premium returns in all circumstances. The discussion draft has also integrated a form of bright line test where one should evaluate whether or not a party has borne costs and or risks, or performed functions disproportionately compared to independent parties.
- **Identification of transactions involving**

the use and transfer of intangibles: The discussion draft provides guidance on factors to consider in the characterisation of intra-group transactions or intangibles. It distinguishes between the classes of transactions involving the use of intangibles.

- **Determining arm's length conditions and pricing for the use or transfer of intangibles:** The draft provides guidance on the application of the existing transfer pricing methods in OECD Guidelines with respect to intangibles. It explicitly endorses income-based valuation methods, noting that discounted cash flow and other financial valuation techniques may be applied either in conjunction with an existing approved transfer pricing method identified in the guidelines or on a standalone basis. The importance of comparability adjustments has been stressed. The draft also highlights the necessity for a thorough understanding of the group's value chain, business process and its interaction with its IP.

  Observation: This is a key point as it makes clear that the draft considers legal ownership to play a key role in driving the analysis.

  Pricewaterhouse Coopers Pricing Knowledge Network

OECD: Discussion draft on safe harbour

Existing OECD transfer pricing guidelines for MNCs and tax administrations adopted in 1995 provide guidance on safe harbour in chapter IV of the OECD transfer pricing guidelines for MNCs and tax administrations adopted in 1995, now proposed to be revised. In this regard, the OECD committee on fiscal affairs (the committee) has released the discussion draft on safe harbour (the discussion draft), comprising proposed revisions. The discussion draft acknowledges the position that an increased number of countries have confirmed that the benefits of safe harbour outweigh related concerns, provided the rules are carefully targeted and prescribed. The OECD also observes that the utility of safe harbour is most apparent when directed at taxpayers or transactions involving low transfer pricing risks.

The benefits of safe harbour as put forth in the draft are that of simplifying and reducing compliance, providing certainty to taxpayers and facilitating redirection of tax administrative resources to complex and high risk transactions and taxpayers.

The draft has also identified concerns round the implementation of safe harbour. These may be in the form of possible contravention of the arm's length principle, the risk of double taxation and double non-taxation, inappropriate tax planning and the unequal treatment of taxpayers. The draft recommends that these risks may be largely eliminated by adopting safe harbour on a bilateral or multi-lateral basis, by means of competent authority agreements between countries. The agreements could define a category of taxpayers or transactions to which safe harbour applies, and pricing parameters accepted by contracting countries.

PricewaterhouseCoopers Pricing Knowledge Network

Income from a domestic related party not to be adjusted by applying transfer pricing provisions under section 40A(2) of the Act

The taxpayer was engaged in the business of running a rice mill and selling rice bran. During the year, the taxpayer sold rice bran to its domestic related party. The TO challenged the rate and was of the view that it was lower than the one charged by other independent third parties for the sale of a similar product. The TO proposed an adjustment on the profit of the taxpayer considering

the average sale price realised by independent parties. The findings of the TO were upheld by the CIT(A). Aggrieved, the taxpayer appealed before the Tribunal.

The Tribunal held the following:

- Section 40A(2) of the Act cannot be applied for making additions for the difference in the value of sales made to a domestic related party.
- Relying on the findings of the SC in the case of Glaxo Smithkline Asia Pvt Ltd, it was held that the CBDT also acknowledged that suitable amendments were required to be made in section 40A(2) of the Act, if transfer pricing provisions were required to be applied to domestic transactions between related parties and undertaking adjustments on account of differences in sale value effected by the taxpayer in comparison of the fair market value.

The Tribunal ruled in favour of the taxpayer on the premise that the provisions of the section were held not applicable in the taxpayer's case.

Durga Rice and Gen Mills *v.* AO [TS-446-ITAT-2012 (Chd)]

***Editor's note:** This ruling pre-dates the introduction of domestic transfer pricing provisions, enacted as part of the Finance Act, 2012.*

Shipping magazines rates accepted as a CUP for charter hire payment for vessels after suitable comparability adjustments

The taxpayer had hired a vessel from its associated enterprise and paid time charter hire charges based on a per day rate (PDR). In order to establish the arm's length price (ALP) of the transaction, the taxpayer relied on the approval received by the Director General of Shipping (DG Shipping) and contended it to be a comparable uncontrolled price (CUP). The taxpayer also relied on a monthly charter hire rate indicated in the Drewry Monthly Report published by Drewry Shipping Consultants Ltd, UK, by contending that the PDR paid by the taxpayer was reasonable. The transfer pricing officer (TPO), considering the published prices in the Shipping Intelligence Weekly published by Clarkson Research Studies and the Drewry Monthly Report, arrived at an arithmetic mean. The TPO made a prorated adjustment for the difference in capacity and determined the ALP.

On appeal, the Tribunal held the following:

- Neither the taxpayer nor the TPO has followed any of the methods prescribed for arriving at the ALP.
- The TPO was not right in his approach of determining the ALP by taking the arithmetic mean of the rates published by the two publications, without making any adjustment for variation in capacity, cost, finance, risk, etc.
- In the absence of a comparable transaction, the matter was set aside to the file of the TO for re-computing the ALP.

Reliance Industries Ltd *v.* ACIT [TS-368-ITAT-2012 (Mum)]

More profit from related than unrelated parties does not by itself make it 'more than ordinary'; profit comparison to be done for individual related parties

The taxpayer was engaged in the business of generation and distribution of power, and sold power to related parties as well as unrelated customers. The taxpayer was eligible for profit linked deduction. The TO reduced the deduction claimed by the taxpayer to the extent of the excessive receipts earned from sale to related parties *vis-a-vis* sale to unrelated customers, as the TO claimed that the taxpayer had earned more than ordinary profits by selling power to related parties at a higher price. The CIT(A) upheld the

adjustment proposed by the TO. Aggrieved, the taxpayer appealed before the Tribunal.

The Tribunal ruled in favour of the taxpayer:

- Section 80-IA of the Act does not provide that if the taxpayer earns more profit from related parties in comparison to unrelated parties the allowance of deduction is to be restricted to the profits derived from unrelated parties.
- The average rate charged by the taxpayer from related parties was less than the rate at which power was sold by the Tamil Nadu Electricity Board. Thus, profit realised by charging rates lower than the rate charged by a government undertaking cannot be said to be 'more than ordinary'.
- Comparison of profits realised from one or more related parties must be undertaken for each party separately.

In the absence of rates charged from individual related parties, the Tribunal held that it was not in a position to adjudicate the issue completely. Thus, the Tribunal restored the matter back to the TO for fresh adjudication.

OPG Energy Pvt Ltd *v.* DCIT [TS-382-ITAT-2012 (Chny)]

Taxing of goods and services
Indirect taxes

VAT, sales tax, entry tax and professional tax

Case laws

Situs of transaction whether inter-state or intra-state to be determined in terms of the provisions of the CST Act

The SC has held that the nature of transaction as inter-state sales or intra-state sales shall be examined in the light of relevant provisions of the CST Act. The HC cannot decide the nature of a transaction merely based on some clauses of the tender document, in the absence of relevant facts.

Zunaid Enterprises *v.* State of MP [2012] NTN (Vol.49)-1 (SC)

To qualify as a lease in the course of import requires the existence of an inextricable link between import of goods and their subsequent lease

The Madras HC has held that transactions involving the import of goods for leasing to an Indian client on a monthly rental basis qualify as 'lease in the course of import' so long as there exists an inextricable link between the import and its subsequent lease in India.

State of Tamilnadu *v.* Karnataka Bank Limited [2012] 50 VST 93 [Mad]

Notification and circulars

Submission of photocopy instead of original TDS certificate permitted under Delhi VAT Act

A photocopy, instead of the original TDS certificate in Form DVAT-43, can now be submitted by the contractor along with the DVAT return for claiming TDS benefit. The original certificate should be retained by the contractor for seven years as prescribed by section 36A (7) of DVAT Act.

Circular no 1 of 2012-13 dated 2 May, 2012

Tax period for specific dealers amended under Delhi VAT Act

The tax period for all dealers with a turnover below INR 5 million has been changed to quarterly. The due date for submitting returns has been reduced to 28 days from the end of the tax period.

Notification no F.3 (27)/Fin (Rev-I)/ 2011-12/DSIII/353 dated 25 April, 2012

E-payment of tax made mandatory for specific dealers in Karnataka

The electronic payment of taxes has been made mandatory for dealers with a tax liability of INR 25,000 or more with effect from 1 June, 2012.

Notification no.EGI.CR-4/2012-13 dated 27 April, 2012

CENVAT

Case law

Goods supplied from DTA to SEZ developers qualify as export

The Mumbai Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that goods supplied from DTA to SEZ developers is to be treated as export of dutiable goods and central value added tax (CENVAT) credit is therefore applicable.

Interfit India Ltd *v.* CCE [2012] TIOL 487 (Mumbai – CESTAT)

Notification and circulars

Clarification issued in relation to admissibility of CENVAT credit for parts of boilers

In continuation of Circular no 964/07/2012-CX dated 2 April, 2012, it is clarified that CENVAT credit is available with respect to parts of boilers. However, it is not admissible with respect to the structural components used for laying the foundation or making structures for the support of boilers.

CBE&C circular no 966/09/ 2012-CX dated 18 May, 2012

Service tax

Case laws

Communication from department satisfying all requirements of order-in-original is an appealable order

The Mumbai CESTAT has held that a communication from service tax authorities, not in the form of an order-in-original but which otherwise satisfies all substantial requirements for the determination of an issue by the application of legal provisions, is an appealable order.

Racold Thermo Ltd *v.* CCE [2012] TIOL 516 (Mumbai CESTAT)

Refund of tax paid on input services cannot be denied prior to the date of registration with authorities

The Bangalore CESTAT has held that a claim of refund of input service tax filed by a 100% export-oriented unit with no domestic turnover cannot be denied merely on the basis that the refund relates to a period prior to registration with service tax authorities.

CST *v.* Focus Infosys (India) Pvt Ltd [2012] TIOL 575 (Bangalore – CESTAT)

Customs or foreign trade policy

Case laws

Refund of special additional duty of customs cannot be denied where imported goods are given to consumers on a 'right to use' basis

The Delhi CESTAT has held that the refund of special additional duty of customs (SAD) cannot be denied where imported goods are given to consumers on a 'right to use' basis since the transfer of right to use is covered by the definition of sale provided under various sales tax and VAT acts.

CC *v.* Reliance Communications Infrastructure Ltd [2012] TIOL 499 (Delhi – CESTAT)

Unjust enrichment not applicable when goods consumed captively

The Delhi CESTAT has held that the bar of unjust enrichment is not applicable when the importer captively consumes imported goods.

Midi Extrusions Ltd *v.* CC [2012] TIOL 536 (Delhi CESTAT)

Extended period of limitation cannot be invoked against the importer in the case of fraud committed by the original licence holder

The Delhi CESTAT has held that the extended period of limitation cannot be invoked against the importer availing benefits under the Duty Entitlement Pass Book (DEPB) Scheme when the DEPB script was obtained by the original licence holder based on fraud or misrepresentation, but the importer obtained the DEPB licence with a *bona fide* belief in its genuineness.

Pee Jay International *v.* CC [2012] TIOL 532 (Delhi – CESTAT)

Notification and circulars

Parallel imports allowed in terms of the Patents Act and Trademark Act

The central government has clarified that the import of original and genuine products sold or acquired abroad legally and imported by persons in India, other than by an intellectual property right (IPR) holder, without the permission of the IPR holder (commonly known as 'parallel imports') are allowed under the Patents Act, 1970 and Trademarks Act, 1999.

Circular no 13/2012 dated 8 May, 2012

Conditions specified for claiming refund of special additional duty of customs on imported goods intended for retail sale in India

The central government has amended the conditions for availing exemption from SAD on import, among other items of mobile handsets and pre-packaged goods intended for retail sale. The importers of these goods are required to comply with the following conditions on or after 1 June, 2012:

- To file declaration of the state where the goods are intended to be taken immediately after importation, whether for sale or distribution on stock transfer basis; and
- Submit VAT, sales tax or central sales tax registration number, as the case may be.

Notification no 29/2012 dated 30 April, 2012 and notification no 32/2012 dated 8 May, 2012

Spares required for capital goods imported from a SEZ can be imported under EPCG scheme

The central government has clarified that capital goods sourced from an SEZ will be treated as 'imported goods'. Hence the benefit of concessional customs duty under export promotion capital goods (EPCG) can be availed on import of spares of such capital goods.

Policy circular no 65 (RE-2010)/ 2009-14 dated 18 May, 2012

Following the rulebook

Regulatory developments

FEMA

Payment and settlement guidelines

The Reserve Bank of India (RBI) has amended the guidelines related to the issue and operation of semi-closed prepaid payment instruments as follows:

- Semi-closed system payment instruments up to INR 2000 (earlier INR 1,000) can now be issued against any identity document submitted by the customer, while ensuring that the same holder has not been issued more than one active instrument by the same issuer at any point.
- Semi-closed system prepaid payment instrument up to INR 10,000 issued without any separate 'know-your-customer' process being undertaken by the issuer, can now also be used to make recurring payment of college fees, school fees and government taxes, besides utility bills, essential services and air and train travel tickets.

DPSS.CO.PD. no 2256/02.14.006/2011-12 dated 14 June 2012

Online reporting of overseas direct investment in Form ODI

Presently, the RBI issues a letter confirming the allotment of the unique identification number (UIN) generated at the time of the online filing of form offshore derivative instruments (ODIs) by the authorised dealer bank for outbound investment made under the automatic route.

With effect from 1 June, 2012, the RBI confirms the allotment of the UIN with respect to outbound investment made under the automatic route through an auto-generated email.

Consequently, the subsequent remittances under the automatic route are to be reported online in Part II of Form ODI after the receipt of the email confirming allotment of the UIN (presently reported after the receipt of the UIN letter from the RBI).

A.P. (Dir Series) circular no 131 dated 31 May 2012

Financial services

Guidelines for white label ATMs in India

Under existing regulations in India, only banks are permitted by the RBI to set up and operate automated teller machines (ATMs). Although there has been nearly 23 to 25% year-on-year growth in the number of ATMs (90,000+ presently), their deployment has been predominantly in Tier I and Tier II centres. There is a need to expand the reach of ATMs in Tier III and Tier VI centres. Accordingly *vide* this Circular, it has been decided that non-bank entities incorporated in India under the Companies Act are to be permitted to set up, own and operate ATMs in India. The locations of ATMs shall be in Tier I to Tier VI cities as prescribed in the schedules to this Circular.

Such non-bank entities will be known as 'white label ATM operators' (WLAO) and such ATMs will be called 'white label ATMs' (WLAs). The non-bank entities are required to obtain RBI authorisation before setting up WLAs within four months from the date of issue of these guidelines. Non-bank entities with a minimum net worth of INR 100 crore are eligible for obtaining such authorisation from the RBI.

The banking services provided by these WLAOs will be based on the debit, credit and prepaid cards issued by the banks to their respective customers. The WLAOs role will, however, be confined to the acquisition of transactions of all the bank customers. Hence, establishing technical connectivity within existing authorised shared ATM network operators and card payment network operators will be important.

RBI circular – RBI/2011-12/612 dated 20 June 2012

Revised format for annual return on foreign liabilities and assets reporting by Indian companies to be filed on or before 15 July, 2012

The RBI has issued a Circular on 15 March, 2011 whereby Indian companies that have received FDI or have made overseas investments are required to submit an annual

return on foreign liabilities and assets.

The RBI has now *vide* this Circular provided a revised format of the annual return in a soft form with in-built validations. The soft forms can be filled in, validated and sent by email by 15 July annually.

RBI circular – RBI/2011-12/613 [A.P. (DIR Series) circular no 133] dated 20 June 2012

Uniformity in risk weight for assets covering public-private partnership and post commercial operations date projects

The RBI had in its Circular dated 21 November, 2011, issued guidelines for the regulation of infrastructure debt fund non-banking financial companies (IDF-NBFCs). These guidelines permitted IDF-NBFCs to assign a risk weight of 50% on bonds covering public-private partnerships and post commercial operations date projects which have completed a year of commercial operation. This was introduced for the purpose of computing capital adequacy for such IDF-NBFCs.

This reduction in allocation of risk weight has now been extended to all infrastructure finance companies which have completed at least one year of satisfactory commercial operations *vide* this RBI Circular.

RBI circular – RBI/2011-12/581 [DNBS.PD.CC. No.276/03.02.089/2011-12] dated 30 May 2012

Reporting of ODIs and participatory notes activity

SEBI has *vide* this Circular revised the reporting timelines for foreign institutional investors (FIIs) issuing ODIs and participatory notes (PNs) specified in the Circular issued on 17 January 2011.

FIIs issuing ODIs and PNs are now required to submit details of ODI and PN transaction reports by the 10th of every month for the previous month's ODI transactions. Consequently from 12 November 2012, details of October 2012 are to be provided by 10 November 2012.

The details of ODI and PN transaction reports (i.e. for the months of December 2011 to April 2012) are required to be submitted with a six-month lag.

The details of ODI and PN transactions reports for the months of May 2012 to September 2012 shall be submitted along with the report of October 2012 by 10 November 2012.

All other provisions of the Circular CIR/IMD/FIIC/1/2011 dated 17 January 2011 shall remain unchanged.

SEBI circular – CIR/IMD/FIIC/14/2012 dated 7 June 2012

Other regulatory

Education

AICTE (Establishment of Mechanism for Grievance Redressal) Regulations, 2012

The All India Council for Technical Education (AICTE) recently released the AICTE (Establishment of Mechanism for Grievance Redressal) Regulations, 2012 (the regulations). The regulations list the various complaints by students that will be considered grievances. The regulations will be applicable to all technical institutions approved or recognised by AICTE under the AICTE Act, 1987.

For the redress of grievances of students under the regulations, each technical institution will appoint an ombudsman. The regulations also mention the procedure for redress and the consequences of no-compliance. These include withdrawal of recognition provided by AICTE or any other penalty applicable under the AICTE (Grant of Approvals for Technical Institutes) Regulations, 2010 amendments as done by the council from time to time.

MHRD press release dated 28 May, 2012

Glossary

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)
Companies Act	Companies Act, 1956
FY	Financial year
HC	High Court
ODIs	Offshore derivative instruments
OECD	Organisation for Economic Co-operation and Development
PAC	Person acting in concert
RBI	The Reserve Bank of India
SAD	Special Additional Duty of Customs
SAT	The Securities Appellate Tribunal
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
AAR	Authority for Advance Rulings

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