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India Spectrum

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Editorial

We are delighted to present another issue of India Spectrum.

Recently, the Finance Minister announced that he has finalised the amendments to General Anti-Avoidance Rule (GAAR) and is awaiting the approval of the Prime Minister and the Cabinet. There is a sense of expectation that GAAR may be toned down to make it more investor-friendly. However, as per an official press release, the effective date of GAAR continues to be 1 April 2013 despite Some Committee recommendation of deferral by three years.

The month also saw Barack Obama being re-elected as the President of the United States. On the eve of returning to power, he expressed his determination to take important policy decisions and continue to work towards a better future. He also mentioned that his focus will be on reducing the deficit in a balanced manner, cut taxes for the middle class and small businesses and create jobs.

On the Indian economic front, the September quarter registered a Gross Domestic Product (GDP) growth of 5.3%. The annual GDP is expected to slip around 5.5% to 6%, which is less than the 6.5% recorded in 2011-12. The declining GDP has invited a warning from rating agencies of an investment downgrade. On its part, the Indian Government is doing its best to push as many reforms as possible in the winter session of the Parliament including the foreign direct investment in retail sector.

On the regulatory front, the RBI has liberalised the conditions relating to fresh external commercial borrowing (ECB) for replacing bridge finance and trade credits for import of capital goods for infrastructure sector companies. Also, ECB for repayment of rupee loans and/or fresh rupee capital expenditure under the approval route has been liberalised.

Ketan Dalal

Shyamal Mukherjee

The Securities and Exchange Board of India (SEBI) has introduced a mechanism for investors across India to submit application forms on public issues by using the electronic mode through the stock broker network of stock exchanges effective from 1 March 2013. This will also enable non-syndicate investors to submit their application forms in electronic mode.

On the judicial front, the Mumbai Bench of the Income-tax Appellate Tribunal in the case of e-Bay International AG, Switzerland held that revenue earned by a non-resident company by providing a platform on its India-specific website for facilitating purchase and sale of goods and services to Indian users is treated as business profits and not as fees for technical services. The Tribunal that the Indian group entities of the assessee did not constitute a dependent agent permanent establishment of the assessee in India under the India-Switzerland tax treaty, since they were merely providing marketing support services and were not authorised to enter into any contract on behalf of the assessee. It thus held that business profits cannot be taxed in the absence of a permanent establishment in India. In another ruling in the case of Mitsui and Company India Pvt. Ltd., the Delhi High Court held that the information received from a tax treaty partner regarding remittance of foreign currency from Mitsui and Co, Japan constitutes valid material for the tax office to form a belief to initiate re-assessment proceedings. Please refer to page 7 and 9 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

Commission to render procurement related services not fees for technical services

The assessee, a tax resident of Hong Kong, entered into a buying agency services agreement (BAS agreement) with its Indian associated enterprise (AIMPL). It provided services for goods purchased outside India on behalf of AIMPL under its control and supervision and received buying commission as a percentage of the purchase invoice. It submitted its tax return for the year without offering the buying commission to tax.

The tax officer (TO) held that the 'buying commission' received was in the nature of fees for technical services (FTS) and hence, taxable under section 9(1)(vii) of the Income-tax Act, 1961 (the Act). The Dispute Resolution Panel (DRP) confirmed the TO's order.

Before the Income-tax Appellate Tribunal (the Tribunal), the assessee contended that the buying assistance services were not in the nature of FTS since the services were not managerial, technical or consultancy in nature.

The Tribunal noted that for an income to be characterised as 'FTS' under section 9(1)(vii) of the Act, the nature of the services should be either managerial, technical or consultancy.

Reference was made to the case of Linde AG v. ITO [1997] 62 ITD 330 (Mum), where the following was held in the text of provision of services to an Indian concern for purchase of goods:

- It is not a consultancy service as no advice was provided while purchasing goods
- It is not a technical service as no technical knowledge was transferred
- It is not managerial services as they are provided towards the adoption and carrying out of the policies of an organisation as a whole and it cannot be said that the assessee was managing affairs of the Indian concern for mere purchase of goods.

It was noted that under the BAS agreement, the assessee was to receive commission for procuring goods and providing incidental services on purchases for AIMPL. Hence, the services rendered by the assessee were purely in the nature of procurement services, and cannot be characterised as managerial, technical or consultancy. Therefore, commission was not taxable as FTS under section 9(1)(vii) of the Act

Adidas Sourcing Ltd *v.* ADIT [TS-725-ITAT-2012 (Del)]

Income through an India-specific website to provide a platform for purchase and sale of goods not taxable as FTS; Indian group entities providing marketing support services not a dependent agent permanent establishment of a non-resident

The assessee company is a tax resident of Switzerland. It operated India-specific websites to provide an online platform for purchase and sale of goods and services to users in India. The assessee had also entered into a marketing support agreement with its two group companies in India in connection with its country-specific websites. The group companies were responsible for collecting the revenue on behalf of the assessee from its operations and provided other support services in India. The assessee claimed that the income from websites was taxable in Switzerland under Article 7 of the Double Taxation Avoidance Agreement (tax treaty) between the two countries and not taxable in India.

The TO stated that the entire income of the two group companies was derived from services rendered to the assessee. Hence, the assessee had a dependent agent permanent establishment (DAPE) in the form of the two group companies.

The Commissioner of Income-tax (Appeals) (CIT(A)) accepted the taxability of income as

business profits. However, it held that the assessee had a permanent establishment (PE) in India and applied tax at 10%.

The Tribunal noted that the website of the assessee provided a marketing platform for buyers and sellers to assemble and transact business, but did not render any managerial services. Detailed descriptions of the products were displayed on the website and a standard facility was used to enter into a transaction. Hence, no technical services or consultancy services were rendered and the consideration received cannot be in the nature of FTS under section 9(1)(vii) of the Act.

For the DAPE, the group companies did not have any other source of income since they provided exclusive services to the assessee. The group companies did not constitute a PE since none of the requirements as contained in Article 5(5) of the tax treaty, such as the requirement to maintain stock on behalf of the sellers or manufacturers, process goods in India for the enterprise or negotiate or enter into contracts for or on behalf of the assessee, were fulfilled.

The Indian group entities did not play any role either in the maintenance or operation of the websites or in finalisation of the transactions between the buyers and sellers. Hence, there was no formation of a place of management of the assessee's business. Merely providing marketing or support services to the assessee did not amount to entering into a contract on behalf of the assessee. Even though the group companies were dependent agents, they did not constitute a PE in India and no profits could be attributable directly or indirectly to be taxable in India. The Tribunal thus allowed the appeals in favour of the assessee on both the issues.

eBay International AG *v.* ADIT [2012] taxmann.com 500 (Mum)

Royalty/tax treaty

Supply of software not to be treated as 'royalty' if it is not a copyright but a copyrighted article; Retrospective amendments cannot be read into a tax treaty

The assessee, Nokia Networks OY (Nokia), is a company incorporated in Finland. It sells GSM equipment to Indian telecom operators (from outside India) on a principal-to-principal basis under independent buyer-seller agreements. The assessee opened a liaison office (LO) in India and subsequently incorporated an Indian subsidiary-Nokia India Pvt Ltd (NIPL or the subsidiary). The LO was carrying out advertising activities permitted by the Reserve Bank of India (RBI). The assessee entered into supply and installation agreements with Indian telecom operators. The installation activities were undertaken by NIPL under independent contracts with Indian telecom operators. The assessee supplied both hardware and software to cellular operators and NIPL for installation work.

The TO and the CIT(A) held that the assessee's LO and the subsidiary constituted a PE of Nokia in India. As a result, a portion of revenue comprising sale of hardware and software was attributable to the latter. The software revenue was held to be assessable as royalty under section 9(1)(vi) of the Act and Article 13 of the India-Finland tax treaty.

On appeal, the Tribunal held that the LO did not constitute a PE under Article 5 of the tax treaty as it was performing only advertisement activities. The Tribunal also noted that Nokia had a PE in India in the form of NIPL as guarantees were given by Nokia that it would not dilute its shareholding in NIPL below 51% without the written permission of the Indian telecom operators. This was apart from the fact that Nokia was in a position to control and monitor NIPL's activities. The Tribunal also held that the payment for supply of software was not considered royalty as the software was

recognised as a copyrighted article and not as a copyright. Therefore, it was not taxable under the Act or tax treaty.

Both the assessee and the department appealed before the High Court (HC) against the Tribunal's order. The issues before the HC were whether the LO and NIPL were PEs of the assessee, whether software was taxable as royalty and whether the offshore supply and installation contracts were composite contracts.

The HC upheld the Tribunal's decision that the LO did not constitute a PE of the assessee. On the issue of NIPL constituting a PE of the assessee, it was contended that the Tribunal's conclusion was based on erroneous facts of lower authorities and therefore, comprised factual errors. Accordingly, the HC remanded the matter back to the Tribunal for fresh consideration along with the issue of attribution of profits.

To determine whether software payment constituted royalty, the TO submitted that the retrospective amendments made to section 9(1)(vi) of the Act by the Finance Act, 2012 were clear in nature and provide that consideration for the use of software was assessable as royalty. However, the definition in the tax treaty had not changed. The HC, relying on the judgement in the case of CIT *v* Siemens Aktiengesellschaft [2008] 310 ITR 320 (Bom), held that amendments under domestic law cannot be read into the tax treaty. As the assessee had decided to be assessed under the tax treaty the consideration would be covered within the purview of the definition of royalty under tax treaty despite the retrospective amendment.

For considering the supply and installation contracts a composite agreement, the facts indicate that the supplies were executed and property in the goods passed outside India even though the agreement was signed in the country. Relying on the judgement of Ishikawajima Harima Heavy Industries v. DIT [TS-30-SC-2007 (SC)], the HC held that the income from supply of equipment was not taxable in India.

Nokia Networks OY *v.* CIT [TS-700-HC-2012-DEL]

Tax treaty

Bonus payable allowed as deduction in the absence of a specific provision in the tax treaty to restrict the expenditure

Expenditure on exempt income not allowed as deduction to compute business profit of a PE

The assessee is a banking company incorporated in Mauritius. It submitted its tax return for its PE operations in India, where it claimed bonus and interest expenditure as deduction. The assessee had daily borrowings and deposits from/to other banks and the RBI to meet statutory reserve requirements, part of which were invested in tax-free bonds on which it earned exempt income.

The TO noted that since a portion of the bonus was not paid before the due date of filing of the tax return, the amount is liable to be disallowed under section 43B of the Act. Furthermore, interest paid on borrowings invested in tax-free bonds was fully disallowed under section 14A of the Act.

The CIT(A) upheld the order of the AO on disallowance of bonus payable under section 43B of the Act. It also held that since sufficient own funds were available with the assessee, interest cannot be disallowed under section 14A of the Act.

On appeal to the Tribunal, the assessee contended that no disallowance can be made under section 43B of the Act since there is no specific reference to such disallowance in Article 7(3) of the India-Mauritius tax treaty.

The Tribunal noted that several tax treaties provide for a restriction on deductibility of expenses, such as the India-US tax treaty, where deduction is allowed in accordance with the provisions, and subject to the limitations, of the tax laws of the source country. In the absence of such a restrictive clause (in

a particular tax treaty), the expenditure incurred for the purposes of business of a PE is completely allowable. Hence, no disallowance can be made under section 43B of the Act for bonus payable on the date of filing of the tax return as Article 7(3) of the India-Mauritius tax treaty provides for deduction of all expenses incurred for the purpose of business of the PE, and does not contain any restrictive clause.

For the disallowance under section 14A of the Act, the assessee contended that the funds were borrowed and repaid within one day. Hence, even if disallowance is to be made, full interest should not be disallowed but be restricted to interest pertaining to one day only. The Tribunal held that once the exempt income is not business income for the purposes of Article 7, in view of a specific exemption under the Act, expenditure incurred in relation to such income is not allowable against other taxable business income. The Tribunal upheld the disallowance of interest expenditure but restricted the amount of disallowance to interest paid on borrowed funds for one day.

State Bank of Mauritius Ltd *v.* DDIT [2012] 25 taxmann.com 555 (Mum)

Reassessment

Reassessment based on information received from treaty partner valid

The assessee company's tax return was processed under section 143(1) of the Act by the TO and accepted without any adjustment.

Subsequently, the TO initiated reassessment proceedings and issued notice under section 148 of the Act on the basis of information received in relation to receipt of a certain amount from Mitsui & Co, Japan, which was not included in the books of account by the assessee. The information was received from the competent authority of Japan (the treaty partner) under Article 26 on mutual exchange of information of the India-Japan tax treaty.

The assessee filed a writ petition before the HC on the validity of the reassessment proceedings. The assessee contended that the TO did not have an independent belief. It was based on information provided by the competent authority, which is not permissible under section 147 of the Act. As per the assessee, this would amount to borrowed or dictated satisfaction for initiating a reassessment proceedings.

The HC held that the TO is not required to come to a conclusive finding but should have *prima facie* or *tentative* belief that the income had escaped assessment at the stage issue of notice under section 148(2) of the Act. The information received from a governmental agency constitutes a valid material to form a *tentative* or a *prima facie* belief regarding escape of income. Reliance was placed on the decision in the case of ITO *v.* Selected Dalurband Coal Co (P) Ltd. [1996] 217 ITR 597 (SC), where it was held that a letter received from a governmental agency constitutes valid material to assume jurisdiction for reassessment.

Therefore, it was held that the information received under Article 26 of the India-Japan tax treaty constituted a live link or connection between the material and formation of belief to initiate reassessment proceedings.

Mitsui & Company India (P) Ltd *v.* ITO [2012] 26 taxmann.com 1 (Delhi)

Interest to Indian branch

Interest payment by Indian branches to overseas head office not taxable in India

The assessee carries out banking activities in India through its eight branches. The assessee has its head office (HO) in France.

In assessment year (AY) 2002-03, the assessee had paid interest of INR 14.83 million to its HO and overseas branches and claimed this as a deduction while determining profits attributable to Indian branches, which is

chargeable to tax in India. The assessee contended that the branch and its HO, being the same entity, interest paid overseas was payment to self and did not give rise to any income in the hands of the HO. However, the TO treated the interest income as chargeable to tax in India in the hands of the assessee's HO/overseas branches. The CIT(A) upheld the order of the TO.

On appeal, the Tribunal relied on the decision of the special bench of the Tribunal in the case of Sumitomo Mitsui Banking Corporation v. DDIT [2012] 136 ITD 66 (Mum) wherein it was held that the interest paid to HO and overseas branches being payment to self cannot give rise to taxable income in India. Accordingly, the Tribunal deleted the addition of INR 14.83 million made by the TO and allowed the appeal of the assessee.

BNP Paribas SA *v.* DDIT [2012] 137 ITD 322 (Mum)

Collection of contingent deposits

Contingent deposit collected from customers to safeguard against disputed tax liabilities is taxable

The assessee is a non-banking financial company and is engaged in the business of hire purchase financing, equipment leasing and allied activities. The assessee was collecting a contingent deposit on an *ad hoc* basis from its leasing or hire purchase customers to safeguard itself from anticipated sales tax liability on lease transactions. The deposit was refundable if the assessee succeeded in the sales tax dispute. According to the assessee, the deposit was not taxable in the year of receipt but was taxable in the year in which the liability to refund the sales tax ceases. Hence, the assessee did not offer the deposit to be taxed as income. The TO treated the contingent deposit as income, liable to tax.

The issue before the Supreme Court (SC) was whether contingent deposit collected from customers to safeguard against disputed sales tax liability constituted income.

The SC observed that the sum collected as contingent deposit was not kept in a separate interest bearing bank account but formed part of the business turnover. It is a settled law that the taxing authorities cannot ignore the legal character of a transaction. Hence, applying the substance over form test, the SC held that the amount collected from the customers as deposit towards sales tax liability and which formed part of the turnover of the assessee will be taxable as income.

Sundaram Finance Ltd *v.* DCIT [TS-697-SC-2012]

Business income and expenditure

Rental income towards usage of information technology park (equipped with various infrastructural services) taxable as business income

The assessee constructed an IT park which was let-out to information technology (IT) companies along with various facilities and amenities. The rental income received from letting out of the commercial premises was offered to tax as business income.

The TO held that the prime intention of the assessee was to let out the property and that various facilities provided were insignificant and incidental to the letting-out activity and hence the rental income will be taxable as income from house property under section 22 of the Act.

The CIT(A) observed that the facilities provided by the assessee along with the premises were extensive and specialised. Therefore, the assessee was not merely letting out the premises but was carrying on complex commercial activities. Hence, the rental income was to be considered business income.

The Tribunal observed that the assessee had invested substantial amounts (almost 40% of the land and building cost) in installation of many specialised amenities and equipment such as transformers, power stations, fibre satellite

connectivity, etc. These were provided along with the premises.

In the case of CIT *v.* Shambhu Investments Pvt Ltd [2003] 263 ITR 143 (SC), it was held that if the property, whether furnished or unfurnished, was let out with an intention to earn rental income, it would be taxed as income from house property, whereas, if the primary object is to exploit the property by way of complex commercial activities, the income from this was to be considered business income.

Accordingly, the object of the assessee was not to merely let out the property but to exploit the property by conducting complex commercial activities. Hence, the income was taxable as business income.

DCIT *v.* Magarpatta Township Development & Construction Co [TS-717-ITAT-2012(Pun)]

Editors note: The Delhi HC in a recent ruling in the case of Garg Dyeing & Processing Industries v. ACIT [TS- 863-HC-2012 (Del)] held that rental income from letting of furniture, fixture or other plants alongwith building is taxable as income from other sources and not as income from house property. In this case, the letting out of building with equipments was inseparable as also the fact that the intention of the parties was to have a composite lease deed.

Expenditure on sub-division of shares is revenue in nature

The assessee incurred expenditure for sub-division of its shares and claimed this as revenue expenditure.

The TO disallowed the expenditure and held it as capital in nature. The Tribunal held that the expenditure was connected with the capital structure of the company and thus, gave an advantage of enduring nature to the company. The Tribunal upheld the TO's view.

Before the HC, the assessee contended that since the sub-division of shares was aimed at increasing the share capital base of the company to facilitate easy trading of shares in the market, it benefited only the shareholders.

The HC relied on the SC ruling in CIT *v.* General Insurance Corporation [2006] 286 ITR 232 (SC), wherein the expenditure incurred on issue of bonus shares was allowed as revenue expenditure holding that it was merely reallocation of the company's funds and did not expand the capital base of the company. The HC held that sub-division of shares is a similar exercise and it does not increase the share capital of the company. The revenue's contention that the company gains an enduring benefit is without any support from the record.

Accordingly, the HC upheld the assessee's contentions and allowed the expenditure claim.

Gujarat State Fertilizers Co Ltd *v.* CIT [TS-633-HC-2012(Guj)]

Tax holiday

Assembling work outsourced to job workers does not disentitle a claim for tax holiday

The assessee manufactured and sold grinders and claimed tax holiday under section 80IA of the Act in its tax return. It was involved in the entire manufacturing process including planning, procuring, inspection and testing, and quality control. The assembling job of the goods was done by two independent job workers.

The TO rejected the claim of tax holiday under section 80IA of the Act on the basis that since the assembling work was done by independent job contractors, no actual manufacturing activity was done by the assessee. The CIT(A) reversed the order of the TO.

The Tribunal, referring to the decision in the assessee's own case for earlier years and the decision of CIT *v.* Pentwalt India Ltd [1992] 196 ITR 813 (Mum), held that when the dyes, tools and raw material belonged to the assessee, and only assembling job was done by the job workers, who were under strict control and

supervision of the assessee, it cannot be said that the assessee was not engaged in a manufacturing activity. The Tribunal thus allowed the tax holiday to the assessee.

The HC noted that the assessee had exercised supervision and control in the assembling job done by the job workers according to specifications based on the material supplied by the assessee. The former had control over the job work done by the contractors, as if they were the employees of the assessee. The HC placed reliance on the decision in the case of CWT v. O. Ramalingam [1995] 216 ITR 566 (SC), where it was held that the expression 'engaged in manufacturing' postulates the assessee's direct involvement in the manufacture. However, it is not necessary that the assessee themselves should be personally engaged, but it is enough that they have employed their own labourers.

Therefore, it was held that although the assessee was not engaged in the assembling job, it would not disentitle it to claim the tax holiday relief since the assessee exercised control over the work done by the job workers. Therefore, the assessee was entitled to the tax holiday under section 80IA of the Act.

CIT *v.* Elgi Ultra Industries Ltd [TS-658-HC-2012 (Mad)]

Notifications

India-UK tax treaty amended; limitation of benefit clause inserted

A protocol to the India-UK tax treaty was signed on 30 October, 2012. The protocol has inserted a limitation of benefit (LOB) clause (Article 28C) in the tax treaty to provide that the benefit of tax treaty shall not be available to a resident if the 'main purpose' or 'one of the main purposes' of the creation or existence of such a residence in the country was to obtain benefit under the tax treaty. Further, the protocol has extended the treaty benefits to a UK partnership firm, to the extent the income derived by the UK partnership is taxed in the UK either in its own hands or in the hands of its partners.

Protocol amending India – UK tax treaty signed on 30 October, 2012

Fair valuation guidelines notified by the CBDT on share allotted by a private company

The Finance Act, 2012 had inserted section 56(viib) to the Act which provides that where a closely held company receives consideration from a resident for issue of shares that exceeds the face value of the shares, the aggregate consideration exceeding the fair market value (FMV) of such shares would be taxable as 'income from other sources'. The CBDT has amended Rules 11U and 11UA of the Income-tax Rules, 1962 to provide for determination of FMV of unquoted shares of private companies. An assessee transferring shares now has an option to calculate the FMV of shares as per the prescribed formula or as determined under the discounted free cash flow method.

Notification No. 52/2012 [F No 142/19/2012 – SO (TPL)/SO 2805(E)] dated 29 November, 2012

Personal taxes
Assessing personal tax

Case laws

Salary/perquisite

Tax paid by employer on salary to employees is a non-monetary perquisite

The assessee entered into agreements with its employees and took over the obligation to pay income tax payable by such employees in India. The revenue authorities contended that the employees were obliged to pay tax on the amount of such income-tax paid by the employer. The assessee contended that the payment of tax was exempt in view of specific provisions contained in section 10(10CC) of the Act.

The CIT(A) passed an order in favour of the revenue considering the tax paid by the employer as a monetary benefit in the hands of the employees and denied the exemption under section 10(10CC) of the Act. The Tribunal on appeal, decided the matter in favour of the assessee by relying on the full bench judgement of the Tribunal in the case of RBF Rig Corporation *v.* ACIT [2007] 297 ITR 228 (Del) (SB). The Tribunal held that the tax paid by the employer was a non-monetary benefit and allowed the exemption claimed under section 10(10CC) of the Act. On appeal to the HC, the latter refused to interfere with the judgements and upheld the order of the Tribunal.

DIT (IT) *v.* Sedco Forex International Drilling Inc [TS-603-HC-2012 (Uttarakhand)]

Perquisite of rent-free accommodation taxable only where there is a concession in rent

A survey under section 133A of the Act was carried out at the office of the assessee. It was observed that the assessee provided accommodation to its employees for which it was charging licence fees but did not withhold tax on the value of perquisite of rent-free accommodation in terms of the provisions of Rule 3 of the Income-tax Rules, 1962 (the Rules). The TO computed the perquisite value under Rule 3 of the Rules, worked out the tax payable thereon and raised a demand for the tax in default including interest under sections 201(1) and 201(1A) of the Act.

On appeal before CIT(A), the assessee contended that the TO had erred in treating the university employees in the category of 'others' instead of treating them as state government employees. The university falls within the ambit of 'state' under Article 12 of the Constitution of India. Hence there was no violation of the provisions of section 17(2) of the Act, as the university employees are state government servants and cannot be classified under the category of 'others'. The CIT(A) observed that the expression 'state' mentioned in Part III of the Constitution of India under the fundamental rights was with regard to nation as a state and it is for the purpose of fundamental rights. It has no relevance to the tax matters as specified in the Act. Accordingly, the CIT(A) held that employees of the assessee cannot be treated as state government or central government employees and accordingly upheld the TO's order.

On appeal before the Tribunal, it observed the SC's ruling in the case of Arun Kumar *v.* UOI [2006] 286 ITR 89 (SC). If the assessee contends that there was no concession, then the authority has to decide the question and record a finding as to whether there was any concession and the case would be covered by section 17(2)(ii) of the Act. Only thereafter may the authority proceed to calculate the liability of the assessee under the Rules. The Tribunal further observed that in this case, the TO had nowhere held in the impugned order that any concession was given by the employer to its employees and they have provided accommodation at concessional rates. The TO straight away applied Rule 3 of the Rules without first establishing that assessee had provided any concession. Accordingly, the Tribunal ruled in favour of the assessee and held that there was no default on amount of tax withholding under sections 201(1) and 201(1A) of the Act.

Superintendent (DDO), CCS HAU Hisar *v.* ITO [TS-623-ITAT-2012 (Del)]

Structuring for companies
Mergers and acquisitions

Case laws

No capital gains on global reorganisation of business to a Mauritian resident holding a valid tax residency certificate

SmithKline Beecham Port Louis Ltd (the applicant), a company incorporated in Mauritius, is a tax resident of the country. Its shares are held by Set First Ltd, UK. It held 99.99% shares of GlaxoSmithkline Asia Pvt Ltd (GSKAPL), an Indian company, as capital asset. As part of the global reorganisation, the applicant proposed to transfer shares of GSKAPL to GlaxoSmithkline (Pte) Ltd, Singapore (GSK Singapore) for cash consideration at fair market value.

The revenue contended that the transaction was not a *bona fide* transaction and was designed to avoid tax in India.

The Authority for Advance Rulings (AAR) held that since the applicant is a tax resident of Mauritius (with a valid tax residency certificate), it is entitled to claim benefit under the India-Mauritius tax treaty. There was hardly any material available to support that a scheme of avoidance was involved. Accordingly, the capital gains in the hands of the applicant were not taxable in India. Furthermore, since there was no chargeability to tax in India, there would be no obligation to withhold tax under section 195 of the Act. Lastly, the AAR held that transfer pricing provisions will be attracted since this is an international transaction between related parties.

SmithKline Beecham Port Louis Ltd, In re [TS-629-AAR-2012]

Sale of shares at cost under a settlement not understatement of consideration

During financial year (FY) 2003-04, the assessee was allotted 16,910 shares at INR 180 per share by Sterlite Industries Ltd (SIL). As on 31 March 2004, the assessee had received 16,910 shares as bonus shares. Subsequently, in FY 2004-05, under the direction of SIL, the assessee transferred 3,208 shares at INR 90 per share.

However, the TO assessed the taxable income instead at INR 90 per share, after computing long-term capital gains and short-term capital gains on sale of shares on the basis of market price of the shares. The CIT(A) upheld the order of the TO.

On appeal before the Tribunal, the assessee contended that that it had received nothing more than INR 90 per share and there is no provision in the Act for considering the market price as the full value of sale consideration on transfer of a capital asset.

The Tribunal observed there was nothing on record to show understatement of sale consideration received by the assessee. Accordingly, the Tribunal, after relying on various SC judgements, held that when the *bona fides* of the transaction and actual sale consideration received by the assessee were not suspected, market value of shares cannot be construed as the full value of consideration for computing capital gains under section 48 of the Act.

SIL Employees Welfare Trust *v.* JCIT [TS-600-ITAT-2012 (Mum)]

Pricing appropriately
Transfer pricing

Case laws

Prelude

During the past month, different Tribunals have decided cases involving transfer pricing (TP) issues, summarised in this communiqué. Interestingly, in each of the dispute resolution forums, emphasis on the facts of the case was stressed and the adjustments proposed by the revenue authorities were rejected.

On the global front, the United Nations (UN) has released a TP practical manual which aims to offer practical guidance to policymakers and administrators on the application of the arm's length principle. This manual endorses the arm's length standard for pricing transactions with multinational enterprises, as did the Organisation for Economic Cooperation and Development, in the TP Guidelines for Multinational and Tax Administrators. Therefore, the UN TP manual attempts to address the practical issues facing developing countries in applying the arm's length standard in a problem-solving manner, rather than providing or elaborating on other possible standards. A brief summary of the recently released manual is provided in this section.

Allowance of management fees based on substantial evidence and successful demonstration of the benefits received from management services rendered by an associated enterprise

The taxpayer was engaged in helping clients in India to conceptualise and produce advertisements that consumers are exposed to via TV, radio, newspapers, magazines, etc. The taxpayer had applied the transactional net margin method (TNMM) to substantiate the arm's length nature of all its intercompany transactions. During the course of assessment proceedings, the transfer pricing officer (TPO) entirely disallowed the payment of management services fee and client coordination fee on the basis that the taxpayer received no services and no third party would have paid for these services. Aggrieved, the taxpayer filed objections before the DRP. Under the direction of the DRP, the TPO reversed the TP adjustment to the extent of an ad hoc 40%. Aggrieved, the taxpayer appealed before the Tribunal.

On appeal, the Tribunal ruled as follows:

- The revenue department had not brought anything on record to challenge or negate the information submitted by the taxpayer.
- The taxpayer was engaged in one class of the business of advertising and its allied activities, and there were no segments independent of each other. Furthermore, the taxpayer's nature of business and nature of services received was peculiar. Thus, entity level benchmarking using the TNMM was the most appropriate.
- Considering the business of the taxpayer, it would be difficult to imagine a successful business entity in the global environment without services that carry significant intrinsic and creative value. Only a business expert can evaluate the true intrinsic value of such services. Thus, guessing in order to judge the value of these services should be avoided. In any case, the value of the services cannot be taken as nil.
- Legitimate business needs and benefits derived must be judged from the point of view of the company or a prudent businessperson. The term 'benefit' to a company in relation to its business has a very wide connotation. It is difficult to accurately measure these benefits in terms of money.

The Tribunal ruled in favour of the taxpayer and deleted the addition made by the TPO and the TO.

McCann Erickson India Pvt Ltd *v.* ACIT [TS-391-ITAT-2012(Del)]

Only operating items to be considered when computing operating margin

The assessee was engaged in the business of manufacturing process control instruments and had entered into various international transactions with its associated enterprises (AEs). The international transactions were benchmarked using the TNMM. During the course of TP proceedings, the TPO reworked the margins of the assessee. In doing so, the TPO treated commission income (an international transaction) as non-operating, thereby making an adjustment to the transfer price of the assessee. Aggrieved, the assessee filed its objections before the DRP which upheld the adjustments made by the TPO. The assessee filed an appeal before the Tribunal.

On appeal, the Tribunal ruled as follows:

- Comparables having huge turnover as compared to the assessee were to be excluded in arriving at the arm's length price (ALP).
- Following the ruling in the assessee's own case for AY 2006-07, commission income (for providing warranty services and for marketing efforts) was held to be operating in nature and should be included in arriving at the margin of the assessee.
- Payment of liquidated damages (LD) was only a contingency and cannot be a regular feature of the business. Furthermore, there was nothing on record to show the basis on which the provision was made or any underlying policy adopted by the assessee. Thus, provision for LD was to be considered non-operating in nature.
- The TP adjustment, if any, should be restricted only to AE transactions, rather than the entire turnover of the assessee.
- Five per cent benefit should be given if the difference between the ALP and the TP is within the 5% range.

Emerson Process Management (India) Pvt Ltd *v.* ACIT [TS-465-ITAT-2011 (Mum)]

Editor's note: This is the first Tribunal ruling to have provided a view on LD. The Tribunal has held against LD being considered operating expense because it was contingent in nature and not a regular feature of the business. However, the expense may not necessarily be non-operating simply because of these factors. Furthermore, the industry in which an assessee operates is also an important consideration in this regard. For example, in the engineering and construction industry, LD may be a normal expense. Even otherwise, there could be other operating expenses subject to certain events or irregular in frequency. But these may not be the appropriate criteria to classify those expenses as non-operating. Therefore, the view on operating or non-operating expense would depend on the facts of the case.

Single versus multiple year data a debatable issue, no penalty on TP adjustment

The assessee was engaged in providing services to its AE. The assessee has used multiple year data in computing the ALP. During the course of assessment proceedings, the TPO held that the use of multiple year data by the assessee was contrary to the provisions of the Act. This thus amounted to submitting inaccurate details of income. The TPO subsequently proposed an adjustment to the transfer price of the assessee. On appeal, the CIT(A) upheld the adjustment made by the TPO. Aggrieved, the assessee appealed before the Tribunal.

On appeal, the Tribunal ruled as follows:

- The use of single versus multiple year data has always been an issue of debate. On account of inclusion or exclusion of certain comparables, the Tribunal held that the selection of comparables was a subjective exercise. The assessee had acted in a bona fide manner in conducting its TP study and determining the ALP. The resultant adjustment proposed by the TPO was on account of a genuine difference of opinion which was debatable. Thus, no penalty can be levied on the adjustment made on account of TP provisions.

Verizon Communication India P. Ltd *v.* DCIT [TS-668-ITAT-2012(DEL)-TP]

Editor's note: This case has been argued by the PwC Litigation team.

Comparable uncontrolled price upheld to be the most appropriate method for benchmarking broking transactions; arithmetic mean and not weighted average to be considered for determining arm's length price; adjustments for differences in volume and functions need to be considered

The assessee is engaged in the business of broking and trading in shares as a corporate member of the Bombay Stock Exchange and the National Stock Exchange. The assessee had provided stock broking services to its AEs. The AE had not transacted with any other broker in India. The assessee had benchmarked its transactions adopting the TNMM. During the course of assessment proceedings, the TPO adopted the comparable uncontrolled price (CUP) method and made an adjustment by using the simple average commission rate charged to the AE. On appeal, the CIT(A) upheld the order of the TPO. Aggrieved, the assessee preferred an appeal before the Tribunal.

On appeal, the Tribunal ruled as follows:

- The CUP being the direct and traditional method and the internal CUP being available, the TPO was right in adopting it as the most appropriate method (MAM).
- The CUP was the MAM in the assessee's case as there was no material difference between the AE and other foreign institutional investors (FIIs), i.e. they operated from similar geographic regions without being in India, and their perception of the Indian market in terms of risks and rewards would be the same.
- There is no provision in the statute which allows the use of the weighted average. Hence, the simple average adopted by the TPO for computing the mean of the commission rate was correct.
- The TPO was right by taking into consideration the brokerage rate charged to the top ten FII clients similarly placed as the AE.
- Adjustments for differences on account of volumes and functions need to be considered and allowed.

The Tribunal restored the case to the TO to consider the assessee's claim of adjustment for differences (on account of marketing function, research and differences in volume) after verifying the details and documentary evidence.

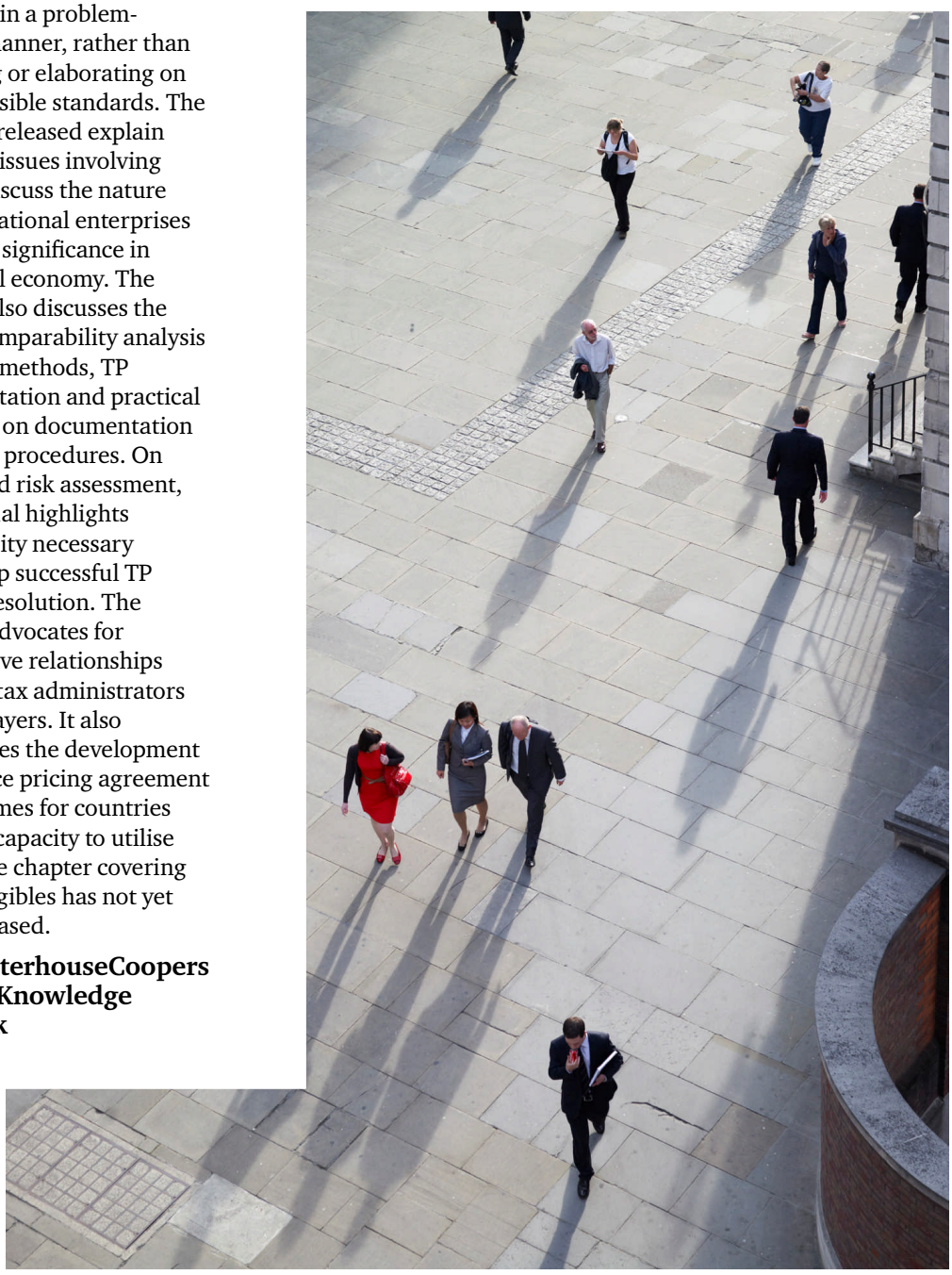
RBS Equities (India) Ltd (formerly known as ABN AMRO Asia Equities (India) Ltd) *v.* ACIT [[TS-661-ITAT-2012 (Mum)-TP]

UN releases practical manual on transfer pricing for developing countries

The UN released eight chapters of its Practice Manual on Transfer Pricing for Developing Countries (the UN Transfer Pricing Manual). The manual aims to offer practical guidance to policymakers and administrators on the application of the arm's length principle,

as well as assist taxpayers in their dealings with tax administrations. The manual attempts to address the issues facing developing countries in applying the arm's length standard in a problem-solving manner, rather than providing or elaborating on other possible standards. The chapters released explain the basic issues involving TP and discuss the nature of multinational enterprises and their significance in the global economy. The manual also discusses the role of comparability analysis in TP, TP methods, TP documentation and practical guidance on documentation rules and procedures. On audits and risk assessment, the manual highlights the capacity necessary to develop successful TP dispute resolution. The manual advocates for cooperative relationships between tax administrators and taxpayers. It also encourages the development of advance pricing agreement programmes for countries with the capacity to utilise them. The chapter covering the intangibles has not yet been released.

PricewaterhouseCoopers Pricing Knowledge Network



Taxing of goods and services
Indirect taxes

Case laws

VAT, sales tax, entry tax and professional tax

Last sale preceding export of goods outside India treated as sale in the course of export and eligible for VAT benefits

The Madras HC has held that the last sale preceding the export of goods outside India will be a sale in the course of export and therefore eligible for value added tax (VAT) benefits in the nature of input credits and refunds as available to zero rated sales.

Emerald Stone Export *v.* Assistant Commissioner [2012] 52 VST 286 (Mad)

Use of goods in telecommunication network sufficient to entitle dealer to purchase goods against Form C

The Kerala HC has held that the mere use of goods in a telecommunication network is sufficient to entitle the dealer to purchase goods against Form C in terms of section 8(1) read with section 8(3)(b) of the Central Sales Tax Act, 1956. There is no obligation on the purchasing dealer to either resell or use the goods in the manufacture or processing of goods for sale so long as the goods are used in the telecommunication network.

Indus Towers Ltd *v.* Commercial Tax Officer and TVS Interconnect Systems Ltd *v.* Assistant Commercial Tax Officer [2012] 52 VST 447 (AP)

Notifications and circulars

Filing of online declaration of tax rate related details of closing stock as on 31 March made mandatory for all dealers under Delhi VAT Act

Filing of online declaration of tax rate related details of closing stock as on 31 March has been made mandatory for all dealers. The due date for filing the declaration is 30 June of the relevant year. However, information pertaining to stock as on 31 March 2012 has to be submitted online by 31 October 2012.

Notification no F.7/433/ Policy-II/ VAT/2012/472-483 dated 16 August 2012

VAT rate increased in Karnataka from 5 to 5.5% and from 14 to 14.50%

The VAT rate slabs of 5% and 14% have been increased to 5.5% and 14.5% respectively effective from 1 August 2012 under the Karnataka VAT Act.

Karnataka Value Added Tax (Second Amendment) Act, 2012

Online generation of statutory forms introduced in Tamil Nadu

A facility for the online generation of Form C and Form F from the Commercial Tax department website has been introduced in Tamil Nadu.

Notification no SRO A-20(a-1)/2012 dated 10 August 2012

Case laws

CENVAT

Duty not payable on collection of freight charges in excess of actual cost of transportation

Freight charges were collected on an equalised basis, irrespective of the distance covered for the specific customer. The Delhi Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that no duty is payable on the collection of freight charges in excess of the actual cost of transportation.

East India Udyog Pvt Ltd *v.* CCE [2012] 281 ELT 634 (Del)

CENVAT credit on capital goods to not be denied on the basis that 98% of total production is exempted from duty

The Delhi CESTAT has held that credit on capital goods cannot be denied on the basis that 98% of the total production is exempt from duty.

Rana Sugar Ltd *v.* CCE [2012] 281 ELT 617 (Del)

Case laws

Service tax

Adjudication order sent to the correct address through registered post is sufficient compliance towards service of order on the assessee

The Delhi CESTAT has held that the adjudication order sent to the correct address through registered post is sufficient compliance, and the onus is upon the assessee

to rebut the presumption of service by producing cogent evidence for non-delivery.

Bihari & Company *v.* CCE [2012] TIOL (941)

Service tax paid on exempt services can be claimed as refund

The Mumbai CESTAT has held that there is no bar in the Finance Act, 1994 (service tax) on the assessee from paying tax on exempt services and claiming refund thereafter.

Crown Products Pvt Ltd *v.* CCE [2012] TIOL (975)

Case laws

Customs/foreign trade policy

Authorities based on documentary evidence of contemporaneous import can reject transaction value of goods

The Madras HC has held that the customs authorities can reject the transaction value declared by the importer based on documentary evidence of contemporaneous import unless rebutted by the importer.

Unit Traders *v.* CC [2012] 281 ELT 659 (Mad)

Interest not payable on delayed return of seized goods

The Delhi CESTAT has held that there cannot be payment of interest on delayed return of seized currency as the Customs Act, 1962 defines goods to include currency and there is no provision of interest payment on return of seized goods.

CC *v.* Shashi Goyal [2012] TIOL (882)

Transferability of Duty Free Import Authorisation cannot be challenged if CENVAT credit availed on consumables used in the manufacture of export products is reversed before its utilisation

The Mumbai HC has held that transferability of the Duty Free Import Authorisation cannot be challenged if the CENVAT credit availed on consumables used in the manufacture of export products is reversed before its utilisation either by reversing the CENVAT credit or by payment through cash along with interest.

Steelco Gujarat Ltd *v.* UOI [2012] TIOL (572)

Duty levied on clearances of goods by EOU unit to DTA can be paid through CENVAT credit

The Bangalore CESTAT has held that the duty levied on clearances of goods by an EOU unit to a DTA can be paid through a CENVAT credit account as it is an excise duty and not a customs duty.

CCE *v.* Matrix Laboratories Ltd [2012] 281 ELT 569 (Bangalore)

Notifications/ Circulars

24X7 customs clearance facility to start at identified ports for specified categories of import and export

The central government has introduced 24X7 customs clearance facility from 1 September, 2012 for the following categories of imports and exports:

- Bills of entry where no examination and assessment is required.
- Factory stuffed export containers and export consignment covered by free shipping bills.

The above facility has been introduced for the air cargo complexes located at Bangalore, Chennai, Delhi, Mumbai, and seaports located at Chennai, Jawaharlal Nehru Port Trust, Kandla, and Kolkata.

Circular no 22/2012 dated 7 August 2012

Amendments made to post Export Promotion Capital Goods Scheme

The central government has amended the Export Promotion Capital Goods (EPCG) Scheme to provide that post export EPCG Scheme shall be available to exporter only on full payment of applicable duties in cash. Earlier payment of applicable duties in cash was not mandatory.

Notification no 8/(RE-2012)/2009-14 dated 26 July 2012

Following the rulebook
Regulatory developments

FEMA

Relaxation of valuation norms for newly incorporated Indian company

The Indian Exchange Control regulations requires subscription of equity shares, compulsorily convertible preference shares or compulsorily convertible debentures (equity instrument) of an Indian unlisted company by foreign investors under the foreign direct investment scheme at a price not less than its fair value as determined by a Securities Exchange Board of India (SEBI) registered merchant banker or a chartered accountant under the discounted free cash flow valuation method.

The RBI has now carved out an exception to the above regulations whereby non-residents (including NRIs) proposing to make investment in an Indian company in compliance with the provisions of the Companies Act, 1956 by way of subscription to a memorandum of association, i.e. the initial share capital can make such investment at face value.

The above liberation would enable newly incorporated Indian subsidiaries of foreign entities to issue equity instruments at face value without applying discounted free cash flow valuation method.

A.P. (DIR Series) Circular no 36 dated 26 September 2012

Liaison office/branch office/project office in India – additional reporting requirement

Currently, foreign companies having thier office in India, namely LOs/branch offices (BOs)/project offices (POs) are required to submit an annual activity certificate/ annual report to the RBI. Additionally, according to the recent amendment under the tax laws, LOs are required to submit details of their activities in Form 49C to the Income-Tax department.

Now, the RBI has notified an additional reporting to be done to the Director General of Police (DGP) by all Indian offices of foreign companies. The report requires providing various information, namely details of personnel employed, activities undertaken, dealing with government departments/ PSUs/NGOs, etc.

The guidelines announced are summarised as follows:

Initial filing by new Indian offices

- Report needs to be submitted to the DGP of the state concerned in which the office is established within five working days of the Indian office becoming functional.
  In the case the foreign entity has set up more than one office in India, such report needs to be submitted to each DGP having jurisdiction in the state where the office is established.

Annual filing by all Indian offices (new and existing)

- The above report also needs to be filed with the DGP concerned on an annual basis along with a copy of the annual activity certificate/annual report, as the case may be.
- A copy of this report also needs to be filed with the authorised dealer (AD) bank by the Indian office concerned.

A.P. (DIR Series) Circular no 35 dated 25 September 2012

External commercial borrowing and trade credit policy – liberalisation

1. Availing External Commercial Borrowings (ECB) for repayment of rupee loans and/or fresh rupee capital expenditure
   The RBI has liberalised the following conditions in relation to the facility available to companies in the manufacturing and infrastructure sector to avail ECB for repayment of rupee loans and/ or fresh rupee capital expenditure under the approval route:

Maximum permissible limit of ECB

- Existing companies with a track record

The maximum permissible limit has been enhanced as follows:

- More than 75% of the average foreign exchange earnings realised during the three most recent FYs
- More than 50% of the highest foreign exchange earnings realised in any of the three most recent FYs

Special purpose vehicles not having a prescribed track record (having completed at least one year of existence and not having sufficient track record/past performance for three FYs)

- 50% of the annual export earnings realised during the past FY

The RBI has now imposed a cap of USD 3 billion for an individual, company or group as a whole availing ECB under this scheme. The overall ceiling for ECB under this scheme continues to be USD 10 billion.

A.P. (DIR Series) Circular no 26 dated 11 September 2012

2. Special relaxation for infrastructure sector

- Fresh ECB for replacing bridge finance
  - Presently, availing of short-term credit (including buyers/ suppliers' credit) in the nature of bridge finance for import of capital goods by infrastructure companies requires two stage RBI approval, i.e. while availing bridge finance and while replacing it with ECB.
  - The RBI has now permitted replacement of bridge finance (in the nature of buyers/suppliers' credit) by an ECB under the automatic route, provided it is refinanced before the maximum permissible period of trade credit and the bill of entry is available for verification.

A.P. (DIR Series) Circular no 27 dated 11 September 2012

- Trade credits for imports of capital goods
  - The RBI has permitted companies in the infrastructure sector to avail trade credit up to a maximum period of five years (currently three years) for import of capital goods subject to the following:
    - Minimum period of trade credit must be at least 15 months. However, it should not be in the nature of short-term rollovers.
    - AD banks would not be permitted to issue letters of credit/ guarantees/letter of undertaking/letter of comfort in favour of overseas supplier, bank and financial institutions for the extended period beyond three years.

All-in-cost ceilings shall remain at 350 basis points over six months London Interbank Offered Rate (LIBOR) for the respective currency.

A.P. (DIR Series) Circular no 28 dated 11 September 2012

Overseas direct investment – filing of annual performance report

The due date for filing annual performance report in Form ODI Part III in respect of each JV or WOS outside India by an Indian party has been changed to 'on or before the 30 of June each year'.

RBI A.P. (DIR Series) Circular no 29 dated 12 September 2012

Financial services

Priority sector lending – targets and classification

The RBI has issued a Circular to make certain amendments to the priority sector lending guidelines issued on 20 July 2012. These amendments will have an impact on the banks in terms of their mandatory lending to agriculture, micro and small enterprises and lending for housing projects

for economically weaker sections/low income groups/ rehabilitation of slum dwellers.

RBI Circular – RBI/2012-13/138 [RPCD.CO.Plan.BC 13/04.09.01/2012-13] dated 17 October 2012

Reporting platform for OTC foreign exchange and interest rate derivatives is proposed

The RBI had advised that all inter-bank over-the-counter (OTC) foreign exchange derivative transactions should be reported on a platform to be developed by the Clearing Corporation of India (CCIL).

Accordingly, the CCIL has completed development of the platform for reporting of the following inter-bank OTC derivatives:

- Foreign currency (FCY) (excluding USD)-INR forwards
- FCY (excluding USD)-INR FX swaps
- FCY-FCY forwards
- FCY-FCY FX swaps
- FCY-FCY options

This platform will be operationalised with effect from 5 November 2012. The salient features of the reporting requirements related to the timeline of reporting transactions to the RBI are available in the Circular.

RBI Circular – RBI/2012-13/248 [FMD.MSRG. No.72/02.05.002/2012-13] dated 12 October 2012

Reporting of OTC call/notice/ term money transactions included in core banking solutions

Presently, banks are required to report OTC call/notice/ term money transactions on the negotiated dealing system (NDS). The RBI has vide this Circular, decided to implement a core banking solutions (CBS) where banks can report their OTC call/notice/term money transactions. Implementation of the CBS will happen over a period of time and from 1 November 2012 onwards until CBS is implemented, banks that are members of the NDS reporting platform 'NDS-call' are required to report such transactions on this platform. Banks that are not members of this reporting platform should report such transactions by sending an e-mail or fax to the Financial Markets Division of the RBI.

RBI Circular – RBI/2012-13/221 [FMD.MSRG. No.71/02.02.001/2012-13] dated 25 September 2012

New capital adequacy framework – 'SME Rating Agency of India Ltd' approved

In addition to the existing five credit rating agencies, namely CARE, CRISIL, FITCH India, ICRA and Brickwork, the RBI has approved the use of the ratings of the SME Rating Agency of India Ltd by banks.

RBI Circular – RBI/2012-13/205 [DBOD.No.BP. BC.41/21.06.009/2012-13] dated 13 September 2012

Public issues in electronic form and use of nationwide broker network of stock exchanges for submitting application forms

Under the Union Budget 2012-13, SEBI has decided to introduce an additional mechanism for investors to submit application forms on public issues. Investors will now be able to submit the application forms electronically using the stock broker network of stock exchanges, who may not be syndicate members in an issue.

SEBI Circular – CIR/ CFD/14/2012 dated 4 October 2012

Glossary

AE	Associated enterprise
ALP	Arm's length price
AY	Assessment year
CENVAT	Central value added tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CIT(A)	Commissioner of Income-tax (Appeals)
DRP	Dispute Resolution Panel
FY	Financial year
HC	High Court
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
TNMM	Transaction net margin method
TO	Tax officer
TPO	Transfer pricing officer
VAT	Value added tax

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