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India Spectrum

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In this issue

Editorial

We are delighted to present another issue of India Spectrum.

The Finance Minister (FM) has recently stated that the forthcoming Budget 2013 will involve the consolidation of several measures. While the International Monetary Fund has recently estimated the Indian economy to grow at 4.5%, the FM has stated that growth will remain at about 5%. With the decision to defer the general anti-avoidance rules after accepting the Shome Committee recommendations, it is also expected that the Budget will grant relief from levy of interest and penalty on indirect transfer of assets by way of sale abroad as recommended by the Shome Committee.

The centre and the states have paved the way for the introduction of a goods and services tax (GST) by reaching an understanding to remove any hurdles in its implementation. After a relook at the taxes to be replaced (excise duty, services tax, etc.) the government is expected to roll out the GST legislation by the end of 2013.

On the Indian economic front, the Reserve Bank of India (RBI) lowered the repo rate, reserve repo rate and the cash reserve ratio by 25 basis points each, in its third quarter review of monetary policy. Though not significant, the rate cut will benefit borrowers.

On the global front, Spain's economic downturn further worsened due to lack of competitiveness within the Eurozone, a troubled banking sector, and excessive household and company debts. One waits to see the whether the stimulus package announced by the Spanish government will bring in the required economic revival. .

The RBI has aligned the definition of 'infrastructure lending' for non-banking financial companies (NBFCs) with that of the 'master list of infrastructure sub-sectors' thereby widening the scope of infrastructure lending by banks and NBFCs.

Ketan Dalal

Shyamal Mukherjee

The Central Board of Direct Taxes has issued a circular clarifying how tax holiday relates to the export of computer software and on-site software development. It has provided clarification on issues relating to the availability of tax benefits on the transfer of an eligible special economic zone (SEZ) unit to another SEZ, receipts from deputation of technical manpower, relevance of a separate master service agreement for every work contract, research and development activities, slump sale, maintenance of separate books of account and on setting up a new undertaking in the same location as an eligible unit.

On the judicial front, the Gujarat High Court in the case of Himalaya Machinery Pvt Ltd has held that while a gain arising on the sale of long-term capital assets eligible for depreciation is taxed as short-term capital gains in terms of a deeming fiction contained in section 50 of the Act, reinvestment exemption otherwise available to long-term capital assets under section 54EC of the Act would not be denied as nature of capital does not change. In another case, the Mumbai Bench of the Tribunal in the case of Toronto Dominion Bank Ltd held that advisory fee or arrangement fee received by an assessee in connection with obtaining of a loan is a one-time receipt related to the services rendered, and hence, taxable in the year of receipt. This cannot be spread over the tenure of the loan. Refer to pages 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

Permanent establishments

Entire income earned by a non-resident from Indian projects would be taxable in India, and not merely the profits attributable to a permanent establishment

The assessee is a firm of solicitors which has its head office in the UK and which has no presence in India. It had carried out certain work on Indian projects. The majority of this work was done in the UK but a small part of it was done in India, by persons visiting India for a short period.

The assessee claimed that in view of Article 7(3) of the Double Taxation Avoidance Agreement between India and the UK (the tax treaty), only the income relating to the services performed in India was attributable to its permanent establishment (PE) in India.

The tax officer (TO) held that the assessee had a service PE in India and brought to tax the entire income earned by the assessee from the Indian projects. The Commissioner of Income-tax (Appeals) (CIT(A)) overturned the TO's order and held that only the income in respect of which services were rendered in India was taxable in India in terms of Article 7(3) of the tax treaty.

The Income-tax Appellate Tribunal (the Tribunal) decided that the entire income from Indian projects was taxable, applying the force of attraction (FOA) principle embedded in Article 7(1) of the tax treaty, whereby the profits of an enterprise may be taxed in another state but only so much of those profits as is 'directly or indirectly' attributable to the PE in that state.

The assessee submitted a rectification application under section 254(2) of the Income-tax Act, 1961 (the Act) on the grounds that the Tribunal had not considered Article 7(3) of the tax treaty, which is relevant to the application of the FOA principle, giving rise to a mistake apparent on record.

The Tribunal observed that the extension of the taxability of profits of a PE by including profits that are 'directly or indirectly' attributable has an analogy in the provisions of Article 7(1)(b) and 7(1)(c) of the UN Model Convention, which provide that in addition to the 'profits attributable to the PE', the taxability of PE profits also extends to the following:

- Sales in another state of goods or merchandise of the same kind as, or a similar kind to, those sold through that PE, or
- Other business carried on in that other state which is of the same as, or a similar kind to, those effected through that PE

The expression 'profits indirectly attributable to PE' incorporates the FOA rule embedded in Article 7(1) of the tax treaty, whereby any income in respect of the services rendered in relation to an Indian project, which are similar to the services rendered by the PE, is also taxable in India in the hands of the assessee—irrespective of whether such services are rendered through a PE or provided directly by the assessee.

Thus, the entire profits relating to the services rendered by the assessee, whether in India or outside, in respect of the assessee's Indian projects is taxable in India. The Tribunal distinguished between the assessee's case and the Supreme Court decision in the case of Ishikawajima-Harima Heavy Industries Ltd. [2007] 288 ITR 408 (SC) on the ground that the decision in the case of Ishikawajima-Harima Heavy Industries Ltd related to Articles 7(1)(b)/(c) of the UN Model Convention whereas this case related to Article 7(3) of the tax treaty.

The Tribunal, while passing the order, had considered the order of the CIT(A) which had specifically dealt with Article 7(3) of the tax treaty. Therefore, the Tribunal cannot be said to have passed the order without considering Article 7(3) of the tax treaty. Consequently, the assessee's rectification appeal was dismissed.

Linklaters & Paines *v* ITO (IT) [2012] 28 taxmann.com 250 (Mum)

Fees for technical services

Consideration paid for logistics arrangements to overseas service providers is business profit and not fees for technical services

The assessee, a film producer, had, while shooting films in various foreign countries, availed itself of the services of overseas service providers, such as the arranging of film extras, security, necessary permissions, make-up of actors and accommodation of cast and crew. It had made payments to the service providers without withholding tax on that payments.

The TO considered the payments made for these services to be in the nature of fees for technical services (FTS) and thus liable to withholding tax under section 195 of the Act. As the assessee failed to withhold tax on the payments, the TO treated the assessee as an assessee-in-default under section 201 of the Act.

The CIT(A) overturned the order of the TO on the ground that the services provided were not technical but commercial in nature and hence taxable as business profits. Since the overseas service providers had no PE in India, such business profits were not taxable in India, in accordance with Article 7 of the tax treaties between India and the respective foreign countries.

The Tribunal held that, according to Explanation 2 to section 9(1)(vii) of the Act, the expression FTS includes consideration for services of a managerial, technical or consultancy nature.

The overseas service providers were remunerated for their efforts and time spent in making logistics arrangements. Hence, such services were purely in the nature of commercial services and could not be termed as managerial or technical services and were therefore outside the purview of the term FTS under Explanation 2 to section 9(1)(vii) of the Act. Therefore, the payments made to overseas service providers constituted business profits of the service providers and was not taxable in India, in the absence of their having a PE in India.

The Tribunal held that the assessee therefore had no liability to withhold tax on the payment made and hence could not be treated as an assessee-in-default under section 201 of the Act.

Yash Raj Films (P) Ltd *v* ITO (IT) [2012] 28 taxmann.com 247 (Mum)

Capital gains

Deeming fiction of treating gain on sale of depreciable assets as short-term in nature does not affect reinvestment in exempt capital gains bonds

The assessee-company had assets liable to depreciation, which were held for more than 36 months. During the year, the company sold the assets and computed short-term capital gains as per the deeming fiction of section 50 of the Act. It also invested in capital gains tax exemption bonds under section 54EC of the Act. The assessment was completed under section 143(1) of the Act.

Subsequently, the TO initiated re-assessment proceedings under section 147 of the Act. He disallowed the exemption under section 54EC of the Act on the grounds that in view of the deeming fiction provision of section 50C, capital gains arising from the sale of depreciable assets are not eligible for exemption under section 54EC of the Act since exemption is available only to long-term capital assets.

On appeal, the CIT(A)

allowed the appeal of the assessee and held that deeming fiction under section 50 is confined only to the computation of capital gains in respect of depreciable assets. Since depreciable assets held for more than 36 months are long-term assets, and if the other necessary conditions under section 54EC are complied with, exemption cannot be denied. The Tribunal upheld the order of the CIT(A).

The Gujarat High Court (HC) noted that under the deeming fiction provision under section 50 of the Act, gains on sale of depreciable assets would be taxable as short-term capital gains. Reliance was placed on the decisions in the cases of CIT v ACE Builders Pvt Ltd [2005] 281 ITR 210 (Bom) and CIT v Assam Petroleum Industries (P) Ltd. [2003] 263 ITR 587 (Gau), where it was held that the deeming fiction under the provisions of section 50 applies only to the computation provisions under section 48 and 49 of the Act. It does not alter the character or nature of the capital asset and therefore the availability of exemption under section 54EC of the Act.

The HC held that no distinction is made by section 54EC of the Act between the depreciable assets or non-depreciable assets in respect of investment in capital gains tax exemption bonds.

Accordingly, the HC held that the long-term capital asset on which depreciation was claimed was eligible for exemption under section 54EC of the Act, subject to compliance with any other necessary conditions.

DCIT *v* Himalaya Machinery Pvt Ltd [TS-877-HC-2012 (Guj)]

Long-term advance booking of a hotel room is a 'capital asset'

The assessee had entered into an agreement with G Ltd for in relation to a long-term reservation of a room in its hotel. Under the agreement, the room was permanently reserved (along with other facilities) for the use and benefit of the assessee. Under the agreement, the assessee was entitled to possession of the room at any time, or to transfer this entitlement to another person.

During the year, the assessee sold the room for a lump-sum consideration. It offered to tax the long-term capital gains on the transfer of the room after claiming the indexation benefit. The assessee claimed the instalments paid for the reservation and maintenance charges over the period as the cost of the acquisition of the hotel room.

During the course of assessment proceedings, the TO held that under the long-term booking the assessee had only a reservation right and it did not become the owner of the hotel room. Hence, the reservation rights could not be treated as a capital asset. The TO treated the gain on the surrender of the reservation rights as taxable under the head 'income from other sources' and allowed deduction only in respect of the instalments paid for the reservation. The CIT(A) allowed the assessee's appeal.

The Tribunal, relying on the decisions in the cases of Syndicate Bank Ltd v Add CIT [1985] 155 ITR 681 (Ker) and Madathil Brothers v DCIT [2008] 301 ITR 345 (Mad), held that under the provisions of section 2(14) of the Act, a 'capital asset' is a property of any kind 'held' by an assessee. A capital asset includes every conceivable right and interest in a property. The exclusive right of possessing, enjoying and disposing of an asset is covered by the expression 'property'.

The assessee had a perpetual right of residence or possession as well as a right to transfer that possession under the agreement, and hence, the long-term advance booking of the hotel room was a 'capital asset' under the terms of section 2(14) of the Act. The Tribunal held that the gain arising on the transfer of the reservation right in a hotel room would be taxable as long-term capital gains and would also be entitled to indexation benefit.

ACIT *v* Shabnam Sachdev [TS-897-ITAT-2012 (Del)]

Advisory fee

Advisory or arrangement fee received in connection with granting of loan cannot be spread over the life of the loan

The assessee-bank received advisory fees in relation to loans granted, executing documents, creation of security, etc. The assessee-bank deferred and recognised the fees over the lifetime of the loans. The TO held that once a loan was granted the entire fee accrued to the assessee. Since the fee was not returnable after services were rendered, the entire fee was taxable in the same year. The CIT(A) reversed the order of the AO and held that, in the absence of any enforceable right, a mere claim to income cannot be taxed on accrual basis. The revenue appealled before the Tribunal.

The assessee bank claimed that since the benefit of the transaction extended over the lifetime of the loans, the fees were to be recognised and offered to tax over the term of the loans. Further, the assessee also claimed that it was required to monitor the loans given jointly by certain banks and also to render certain services after the sanctioning of the loans. The Tribunal held that the fee was a one-time receipt and had relevance only up to the stage of sanctioning of the loan. The disbursal of the loan or the period during which the loan was repaid could not be considered to be a part of the rendering of services connected with the obtaining of the loan. Since the fee was not returnable at any point and the assessee-bank could not furnish any evidence in relation to services to be provided after the sanction of the loan, there was no justification for spreading the advisory fee over the life of the loan and the entire income was taxable in the year of accrual.

DDIT (IT) *v* Toronto Dominion Bank Ltd [2012] 138 ITD 506 (Mum)

Valuation of securities

Valuation of stock of securities resulting in unrealised appreciation is not income

The assessee was a banking company registered in Korea which was carrying on a banking business in India through its branch. It invested in securities which were categorised as 'available for sale'. Under a consistently applied accounting policy, the net appreciation in the value of the securities was not recognised as income by the assessee on the ground that it represented unrealised and notional profits.

The TO followed its decision involving the same assessee for an earlier year and held that the net appreciation in the value of securities is taxable as income. On appeal, the CIT(A) upheld the TO's order even though the predecessor CIT(A) had held in favour of assessee.

The Tribunal observed that the assessee was permitted relief connected with a similar issue by the CIT(A) in the earlier case by deleting the addition made by the TO on account of unrealised profits on revaluation of securities. An appeal filed by the revenue on this issue had been dismissed by the Tribunal in the case of DDIT (IT) v Chohung Bank [2010] 126 ITD 448 (Mum) where it was held that the method of 'cost or market value, whichever is less' is a recognised method for the valuation of closing stock. Reference was also made to the circular issued by the RBI on valuation which too supported this view.

Shinhan Bank *v* DDIT (IT) [2012] 54 SOT 140 (Mum)

CBDT circular

Clarification on direct tax benefits relating to export of computer software

The CBDT has issued a clarificatory circular on direct tax incentives regarding sections 10A, 10AA and 10B of the Act relating to the export of computer software. A summary of the issues for which clarification has been provided is as follows:

- *On-site development of computer software qualifies as export activity:* Profits and gains arising from the on-site development of computer software outside India shall be deemed to be export and shall be eligible for tax benefit under sections 10A, 10B and 10AA of the Act if a contract exists between the client and the eligible unit and there is a direct and intimate nexus between the development of software abroad and the eligible unit established in India.
- *Receipts from deputation of technical manpower for on-site software development abroad is eligible for deduction:* Profits derived from deputation of technical manpower abroad for software development activities, pursuant to a contract between the client and the eligible unit, will be eligible for deduction provided the deputation is made for the development of software.
- *Relevance of a separate master service agreement for every work contract:* Benefits under sections 10A, 10AA and 10B of the Act are available even where there is no separate and specific master service agreement (MSA) for each scope of work (SOW). The SOW would take precedence over the MSA when determining whether eligibility to receive tax benefits under sections 10A, 10B and 10AA of the Act exists.
- *Research and development activities relating to software development:* Research and development activities embedded in engineering and design are covered by notification no 890(E) dated 26 September 2000 for the purpose of explanation 2 to section 10A and 10B of the Act.
- *Availability of tax benefits in slump sale:* In the case of a slump sale of an entity, a claim of tax holiday cannot be denied due to a change in the ownership where the unit is an eligible undertaking. A tax holiday can be received for the unexpired period at the rates applicable for the remaining years.
- *Maintenance of separate books of account for an eligible units:* In accordance with the law, separate books of account for units claiming tax benefits need not be maintained. The TO may request information relating to different units to verify the claim and the value of the exemption eligible under sections 10A, 10AA and 10B of the Act.
- *Transfer of an eligible SEZ unit to another SEZ:* Transfer of an eligible special economic zone (SEZ) unit to another SEZ as a result of commercial exigencies will not result in a denial of tax benefits due to physical relocation. The relocated unit will be eligible to receive tax benefits for the unexpired period at the applicable rates.
- *On the establishment of a new industrial unit in the same location as an eligible unit:* Establishing a fresh unit where an eligible unit is already in existence will not render the already existing unit ineligible for tax benefits if the fresh unit is set-up after obtaining necessary approvals from the competent authorities. The unit should not, however, be formed by the splitting or reconstruction of an existing business and all other conditions prescribed must be fulfilled.

CBDT circular no 01/2013 [F no 178/84/2012-ITA.I] dated 17 January 2013

Personal taxes

Assessing personal tax

Case laws

Salary/perquisite

While deciding residence status, the day of arrival in India is to be excluded if it is not a complete day

The assessee, an employee of Transocean Discoverer, worked on a rig outside India. The assessee filed his tax return and gave himself the status of a 'non-resident', declaring a loss of INR 0.071 million. The TO noticed that the assessee received a salary of INR 1.65 million in India, which should also have been subject to taxation in India. The TO initiated reassessment proceedings under section 147 of the Act. The TO verified the details from the assessee's passport and concluded that he stayed in India for 187 days during the particular financial year. Since the period in India was more than 182 days in the financial year, the TO considered the assessee to be a 'resident' and liable to tax salary income. The TO also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The assessee contended that he generally left early in the morning, arrived late in the night after completing his work abroad and attended work on the next day. The CIT(A) after considering the submissions of the assessee observed that the TO had counted both the arrival and departure day as days in which he stayed in India. The CIT(A) also observed that, as per the General Clauses Act, a day is counted as being from midnight to midnight. The CIT(A) also relied on the case of Manoj Kumar Reddy v ITO [2009] 34 SOT 180 (Bang) wherein it was held that the arrival day is not to be counted when considering a stay in India. On this basis CIT(A) decided that either the arrival date or the departure date was to be excluded when counting the assessee's number of days in India and, hence, decided the appeal in favour of the assessee.

On the tax authority's further, the Tribunal, relying on the case of Manoj Kumar Reddy, held that the arrival date is to be excluded from the count, particularly when it is not a complete day. The Tribunal observed that the number of days, after excluding the arrival days, were less than 182 days, and, therefore, dismissed the appeal filed by the tax authority.

ITO *v* Fausta C Cordeiro [2012] 53 SOT 522 (Mum)

Under a land development agreement, capital gains will arise in the year of transfer of possession of land to the developer

The assessee filed its tax return for assessment year 2007-08. The return included income from house property, business income and income from other sources, along with the income of his minor child. During the course of assessment proceedings, the TO observed that the assessee owned land and entered into a development agreement with a developer to develop the land and construct flats on it, and to share the built-up area in the ratio of 50:50. The TO considered that the agreement for development amounted to a 'transfer' within the meaning of section 2(47) of the Act and brought the resultant capital gains to tax.

The assessee made an appeal before the CIT(A). The CIT(A) upheld the order of the TO. Before the Tribunal, the assessee contended that the possession of the property had not been handed over to the developer and the developer merely had the right to enter the property to carry out construction but did not have a right of legal possession. The assessee further referred to another important requirement of section 53A of the Transfer of Property Act, 1882, that the developer must have performed or be willing to perform his part of the contract. In this case, up to the end of the previous year the developer had not performed its part of the contract. Accordingly, the agreement did not amount to transfer and the question of taxing capital gains did not arise.

The Tribunal held that as per the land development agreement, the owners had given certain rights to the developer against a consideration. Consequently, if the developer takes possession of the property and further steps in relation to construction of the flats, then would be considered as a 'transfer' under section 2(47)(v) of the Act. Hence, the fact that the legal ownership continued with the owner and was to be transferred to the developer at a future distant date did not affect the applicability of section 2(47)(v) of the Act.

Accordingly, if the possession and control of the property had already beem vested with the developer and he it had performed its part of the contract, it could be said that the development agreement was in operation. Hence, this was rightly treated as transfer under section 2(47)(v) of the Act and liable to capital gains tax.

Ravinder Singh Arora *v* ACIT [2012] 53 SOT 124 (HYD)

Notification

Rajiv Gandhi Equity Saving Scheme-section 80CCG

The Finance Act 2012 introduced a new section, 80CCG, which permits resident individuals to make deductions in respect of investments made under an equity savings scheme announced by the central government. A deduction of 50% of the amount invested is allowed for investments made as per the prescribed scheme, subject to a maximum limit of deduction of INR 25,000.

The central government has recently announced the Rajiv Gandhi Equity Saving Scheme (RGESS) 2012, in notification no 51/2012, in the exercise of the powers conferred under section 80CCG(1) of the Act.

The scheme allows new retail investors to invest in eligible securities and to receive a deduction from gross total income of 50% of the amount invested, up to a maximum of INR 25,000. The scheme defined the expression 'new retail investors' as resident individuals who, on the date of the notification, donot have a demat account and had not made any transactions in the derivative segment, or individuals who have a demat account but had not made any transactions in the equity segment or the derivative segment. This one time deduction will be given to first time investors whose annual taxable income does not exceed INR 1 million. The investment will be subject to a fixed lock-in-period of one year, followed by a flexible lock-in-period of two years.

The eligible stocks under this scheme include stocks listed under the BSE 100 or CNX 100, or those of public sector undertakings which are navratnas, maharatnas and miniratnas or follow-on public offers (FPOs) of these companies, etc. If the assessee, in any previous year, fails to comply with any of the prescribed conditions, the deduction originally allowed shall be deemed to be the income of the assessee in that previous year and shall be liable to tax.

Notification no 51 of 2012 dated 23 November 2012

Structuring for companies

Mergers and acquisitions

Case laws

Loss on forfeiture of shares purchased from sister concern not a 'sham' and allowed as capital loss

The assessee purchased partly-paid shares in Instrument Explorer.com Pvt Ltd (IEPL) from its sister concern. The assessee could not pay the balance call money to IEPL. Consequently, the shares were forfeited by IEPL resulting in short-term capital loss to the assessee.

The TO rejected the assessee's claim, treating the whole transaction as a sham and a colourable device for reducing tax liability.

On appeal, the CIT(A) ruled in favour of the assessee. The revenue appealed to the Tribunal.

The Tribunal observed that the assessee and IEPL were not related entities. It also noted that the sister concern also booked loss on the balance shares held by it in IEPL and that this was accepted by the revenue authority in the assessment proceedings. The allegation of the TO that the transaction was a sham therefore could not be accepted. The Tribunal also noted that the survey conducted at IEPL's office could not lead to the conclusion that the transactions were not genuine. Accordingly, the Tribunal ruled in favour of the assessee.

DCIT v JDP Shares Pvt Ltd [TS-842-ITAT-2012(Mum)]

Transfer of complete control over an asset, and not execution of agreement, decides chargeability of capital gains

The assessee, along with his wife, owned shares in a company, RLS, which owned two flats. In assessment year (AY) 1996-97, the assessee and his wife jointly entered into an agreement to transfer the entire share capital of RLS to SRF Ltd.

As per the agreement, a sale consideration was to be discharged in instalments and, upon payment of the first instalment, all the shares were to be transferred to the buyer's name in RLS' records. However, the share certificates were to be kept with mutually decided solicitors, until discharge of the final instalment.

The TO contended that the transaction amounted to a 'transfer' under section 2(47) of the Act and, hence, was chargeable to capital gains tax in AY 1996-97. On appeal by the assessee, the CIT(A) ruled in favour of the assessee. However, the Tribunal upheld the contentions of the revenue and the assessee filed an appeal with the HC.

The HC noted that, as per the agreement, shares were to be physically transferred only on payment of the full consideration, without which the transferee did not have any right to deal with or transfer shares in or any assets of RLS. Thus, it was held that since the shares were to be physically transferred to the buyer company only after payment of the full price, it could not be said that there was any transfer in the property as contemplated by section 2(47) of the Act.

Therefore, it was held that the property or shares held by the company were not transferred in AY 1996–1997.

Rajat Lal *v* CIT [ITA no 6 of 2005] (Allah. HC)

Pricing appropriately
Transfer pricing

Prelude

The General Anti-Avoidance Rules (GAAR) were introduced by the Finance Act, 2012, effective from 1 April 2014. With the intent of finalising the guidelines and to ensure a greater clarity on GAAR issues, the Prime Minister constituted an expert committee under the chairmanship of Dr Parthasarathi Shome. In the month of September 2011, the committee published its draft report which contained various recommendations for amendment of the GAAR provisions, guidelines to be prescribed, and clarifications and illustrations to issued through circulars. After examining the responses to the draft, the committee submitted its final report on 30 September 2012. This was made publicly available on 14 January 2013. It has been proposed in the draft guidelines that the Specific Anti Avoidance Rules (SAAR) (such as transfer pricing) will prevail over the GAAR. However in exceptional circumstances, the GAAR will prevail over SAAR. Ambiguity still arises in respect of the illustrations given in the guidelines on the exceptional circumstances in which GAAR will prevail over SAAR. The absence of clarity and exactness, coupled with the sensitivity around the GAAR, may lead to further protracted litigation - at the taxpayer's expense. Thus the decision to defer the application of the GAAR to April 2016 is a welcome proposition.

Case laws

Discounted cash flow method the most appropriate to determine the value of shares for determining ALP

The taxpayer was engaged in the real estate business by way of building and leasing out a technology park and a software park. For the purpose of enabling a joint venture (JV) business, the taxpayer, along with an unrelated party, incorporated a company by buying equal shares. The taxpayer and the unrelated party entered into an agreement with the taxpayer's associated enterprise (AE) to sell the shares invested in the JV company. Separately, the taxpayer incorporated another company and subsequently entered into an agreement with its AE to sell the shares held in this company. In its sale of its shares in this company, the taxpayer adopted the comparable uncontrolled price (CUP) method as the most appropriate method of determining an arm's length price, comparing the price at which it sold its shares in the JV business. The taxpayer also placed reliance on the valuation certificate issued by a chartered accountant to benchmark the transaction relating to the sale of shares, adopting the methodology prescribed in the Controller of Capital Issues (CCI) guidelines. During the transfer pricing audit, the transfer pricing officer (TPO) was of the view that the taxpayer's reliance on the valuation certificate could not be accepted and held that, as per the guidelines issued by the SEBI, the taxpayer had to adopt the discounted cash flow (DCF) method in its determination of the arm's length price (ALP). The TPO therefore proposed an adjustment to the taxpayer's transfer price. On appeal, the Dispute Resolution Panel (DRP) upheld the adjustments made by the TPO. Aggrieved, the taxpayer appealed before the Tribunal.

On appeal, the Tribunal held as follows:

- On the applicability of comparable uncontrolled price (CUP), the Tribunal held that the sale of shares by the unrelated party and taxpayer was through a single agreement and all clauses were equally applicable to both parties. Hence, the transactions could not be considered as CUP.
- The CCI guidelines are meant for a totally different purpose and could not be used to

determine the transfer pricing methodology prescribed for determining the ALP of an international transaction.

- In the taxpayer's case both the companies whose shares were sold were private limited companies which had no ready market for their equity shares due to various constraints on the transfer of their shares. However, the sale of shares were to its own AE, and thus to verify the fairness of the prices, a value of such shares which discloses its true market potential has to be considered.
- The DCF method was adopted by the TPO for the reason that DCF is an accepted international methodology for valuing an enterprise and determining the value of the holding of an investor.
- The Tribunal acknowledged that there were disputes around the discounting rate adopted in the valuation and there were errors had been committed by the TPO in determining the rate. For this purpose, the Tribunal ordered the matter returned to the TO or TPO, to re-calculate the value of the companies so as to arrive at the ALP.

Editor's note: In this case, the taxpayer was represented by the PwC Litigation team.

Mumbai Tribunal: Payment of a royalty not dependent on characterisation of the transaction

The taxpayer was primarily engaged in the manufacture of insecticides and pesticides. It had entered into a technical licence agreement with its AE for grant of a licence to use technology in India for commercial production. The taxpayer was required to sell its products only to the parties approved by the group and the sales were to both AEs and non-AEs. Intermediates/raw materials were purchased primarily from AEs, but also from third parties. In the transfer pricing report, the taxpayer submitted that the arrangement with the AEs was in the nature of contract manufacturing. During the course of assessment proceedings, the TPO held that since purchase and sales were only from/to AE and sales were not to be made to anybody else, and there was no commercial exploitation of technical knowhow, the functions being performed by the taxpayer were nothing but contract manufacturing. Since, therefore, the agreement was a contract manufacturing agreement, there was no justification for payment of a royalty for use of technical knowhow, etc. Accordingly, the TPO determined the ALP to be nil. The CIT(A) affirmed that the taxpayer was a contract manufacturer but allowed a royalty payment on sales to the non-AEs.

On appeal, the Tribunal ruled as follows:

- The TPO had to examine whether the price paid or amount paid was at arm's length or not under the transfer pricing provisions and rules. The rules do not authorise the TPO to disallow any expenditure on the grounds that it was not necessary or prudent for the taxpayer to have incurred this expenditure.
- Whether or not there was a royalty payment is independent of whether the taxpayer was a fully-fledged manufacturer or a contract manufacturer or a toll manufacturer. The nature of the manufacturing activity cannot have any bearing on the payment of a royalty.
- There was no logic in allowing a royalty on sales made to non-AEs but not on sales made to AEs, as the sale price to AEs was at arm's length and at the same price as were the sales to non-AEs.
- Since the royalty was for allowing the taxpayer to utilise the technical knowhow and the licence for manufacturing, the payment of a royalty was

wholly and exclusively for the purpose of the business.

- The 5% rate of royalty was allowed by the CIT(A) on part of the sales. The revenue authority had not objected to the said rate. Therefore, the 5% royalty rate was held to be an arm's length price.

Based on the above, the Tribunal deleted the adjustment made by the TPO.

SC Enviro Agro India Ltd *v* DCIT [TS-749-ITAT-2012 (Mum)]

Editor's note: In the above ruling, the Tribunal made a worthwhile observation that the TPO decided that the taxpayer was a contract manufacturer without either examining the nature of the arrangements in question or the nature of the taxpayer's manufacturing activity. However, on the contrary and eventually, the Tribunal did not opine on the characterisation for the taxpayer. The nature of the taxpayer's arrangement with its AE is an important consideration for deciding whether or not a royalty becomes payable. Accordingly, as regards the inter-relationship between contracting manufacturing and royalties, the ruling that the nature of the manufacturing activity cannot have any bearing on the payment of a royalty is surely not consistent with facts.

Bangalore Tribunal: Principles of comparability, uniformity, consistency discussed

The taxpayer, a private limited company, is engaged in the business of exporting customised electronic data, computer software, and articles or things generated from research activities using computer-aided technology in several areas of technology to its group companies outside India. During the course of assessment proceedings, the TPO was of the opinion that the taxpayer was basically conducting research and development and engineering analysis with the aid of sophisticated labs/software in various fields of engineering. The TPO rejected the taxpayer's TP study in which the taxpayer had referred to comparable companies operated in the field of development of computer software. On the premise that the comparables adopted by the taxpayer were functionally different, the TPO proceeded to determine the ALP by conducting a fresh search for comparables engaged in research and development (R&D) activity. Aggrieved, the taxpayer preferred an appeal before the CIT(A). The CIT(A) agreed with the comparables adopted by the TPO but directed the TO to allow the working capital adjustment and depreciation adjustment.

On appeal, the Tribunal ruled as follows:

- The taxpayer had been catering to nearly all of its group's diverse businesses worldwide, touching nearly every scientific discipline across the spectrum and the TPO rightly held that the taxpayer was not involved in simple software development but was engaged in research and development in technical and engineering services on a contract basis.
- The outcome of the research and development conducted by the taxpayer was delivered to the customers/AE through electronic media. However, the mode of delivery of the results of research and development cannot determine the nature of the functions/activities of a taxpayer.
- Functions are not synonymous with or analogous to the industry, and comparable companies need not be from the same industry for comparability analysis under the transactional net margin method (TNMM).
- In general, closely comparable products/services are required if the CUP method is

used but the resale price method (RPM) and controlled price method (CPM) generally require lesser degree of products or services comparability and may be appropriate if functional comparables are available.

- The approach adopted to reject/accept comparables must be consistently followed across AYs. Cherry-picking is not allowed.
- Further, in the taxpayer's case, a loan was taken in 2001, and interest was also determined at that time. Since in prior and subsequent AYs, the TPO had accepted the interest rate, in view of the rules of uniformity and consistency, the same approach should be adopted in the year in question as well.
- Uniformity and consistency in approach are essential for both the revenue and the taxpayer, unless circumstances warrant otherwise.

The matter was remanded back to the TO/TPO for reconsideration of the issue de novo for all the AYs.

GE India Technology Centre Pvt Ltd *v* DDIT [TS-768-ITAT-2012 (Bang)]

Bangalore Tribunal: Comparability issues on provision of intra-group software development services

The taxpayer was engaged by its parent company to render software research and development support services and was remunerated on a cost-plus basis. The taxpayer had selected TNMM as the most appropriate method to benchmark its international transactions. During audit proceedings, the TPO rejected the taxpayer's economic analysis and conducted a fresh comparable search based on relevant-year data. In addition, the TPO treated foreign exchange gain and provision for bad debts as non-operating expenses while including fringe benefit tax (FBT) as an operating expense, for the purpose of computing the net profit margin. Based on this analysis, the TPO proposed an adjustment to the value of the taxpayer's international transactions without giving the benefit of the +/- five percent range. Aggrieved, the taxpayer filed its objections with the DRP which upheld the adjustment made by the TPO. The taxpayer subsequently appealed before the Tribunal.

On appeal the Tribunal ruled as follows:

- The turnover filter is an important criterion in choosing comparables and that, as the taxpayer could be categorised as a small-sized company, companies with turnover in the range of 10 million to INR 2 billion should be considered for comparability purposes.
- Merely because a comparable has shown abnormal profits or abnormal losses cannot be a ground for its exclusion. There have to be explicit reasons resulting in abnormal/supernormal margins for rejection (such as lack of functional comparability, exceptional circumstances, etc).
- Placing reliance on the jurisdictional ruling in the case of SAP Labs India Pvt Ltd v ACIT [2011] 44 SOT 156 (Bang), the Tribunal ruled that foreign exchange gain/loss is an integral part of the sale proceeds of a taxpayer carrying on an export business and should be considered as operating for the purpose of the computation of operating margin.
- Further, the Tribunal directed the TO to follow a consistent approach in the case of the taxpayer and comparable companies insofar as the exclusion of FBT for margin computation was concerned.

Trilogy E- Business Software India Pvt Ltd *v* DCIT [TS-748-ITAT-2012 (Bang)]

Hyderabad Tribunal: Section 92B(2) not applicable to transactions between domestic entities

The taxpayer, a JV company, entered into a transaction with its JV partner which is an Indian company. During the course of the assessment proceedings, the TPO was of the view that these transactions were deemed international transactions. The TPO believed that the terms of the transactions were determined, in substance, between the taxpayer and the Indian company. The taxpayer opposed the TPO's view. The DRP upheld the TPO's view. Aggrieved, the taxpayer appealed before the Tribunal.

On appeal, the Tribunal ruled as follows:

- Both the parties were residents, and the transaction between the taxpayer and the JV partner does not constitute an international transaction.
- Further, transfer pricing provisions are not applicable to transactions between domestic related parties. Had they been there would have been no need to bring about the amendment in this regard in the Finance Act, 2012.
- The transaction in question involved direct rendering of services by the JV partner to the taxpayer and not to the AE, using the JV partner as an intermediary.
- The policies of the other JV partners of the taxpayer were being directly controlled by the Andhra Pradesh government. In view of the active participation of the government in the functioning of the taxpayer, it could not be said that the AE would influence the taxpayer's entering into the contract or its terms and conditions.

Swarnandhra IJMI Integrated Township Development Co Pvt Ltd *v* DCIT [TS-762-ITAT-2012 (Hyd)]

Taxing of goods and services
Indirect taxes

Case laws

VAT, sales tax, entry tax and professional tax

Consideration received from manufacturer for free replacement of parts under warranty arrangement is liable to VAT

The Kerala High Court (HC), following the decision of the Supreme Court (SC) in Mohd Ekram Khan & Sons v Commissioner of Trade-tax [2004] 136 STC 515, held that the consideration received from the manufacturer through credit notes for free replacement of spare parts under a warranty arrangement was subject to sales tax, as it amounted to a sales consideration for spare parts.

MGF Motors Ltd *v* State of Kerala [2012] 55 VST 81 (Ker)

Hospitals are liable to pay value added tax on sale of medicines

The Kerala HC held that hospitals are liable to register, under the Kerala VAT laws, and to pay tax on the sale of medicines and consumables to patients. Hospitals cannot escape the liability to register and pay taxes under value added tax (VAT) laws by making the argument that the sale of medicines is in the course of rendering hospital services. However, if in an individual case, a particular transaction does not qualify as a sale, it is for the hospital to contest the matter in accordance with the law.

Sanjos Parish Hospital *v* Commercial Tax Officer [2012] 55 VST 208 (Ker)

Case law

CENVAT

Credit admissible on inputs sent on job work when job worker has not received exemption

The Gujarat HC has held that credit on inputs sent on job work cannot be denied on the grounds that the job worker has not received exemption under notification no 214/86-Central Excise but chose instead to pay duty on the final product.

CCE *v* Rohan Dyes & Intermediated Ltd [2012] 284 ELT 484 (Guj)

Job worker entitled to receive credit in respect of all raw materials used in the course of manufacture

The Delhi Central Excise and Service-tax Appellate Tribunal (CESTAT) held that a job worker is entitled to receive avail the benefit of notification no 214/86-CE even if he were to procure certain raw materials directly as there is no condition in the notification that all raw materials required for manufacture of a final product must be supplied by the principal manufacturer.

CCE *v* Abhinav Chemicals [2012] 284 ELT 589 (Del)

Case law

Service tax

Income tax paid in India on behalf of foreign service provider to be included in the 'gross amount' for payment of service tax under reverse charge

The Madras CESTAT has held as follows:

- The liability to pay service tax on services received from outside India on a reverse charge basis under section 66A of the Finance Act, 1994, arises only from 18 April, 2006 onwards.
- Where the consideration for such services are paid net of taxes, the amount of income tax directly deposited by the service receiver in India on behalf of the foreign service provider should be included in the 'gross amount', for service tax valuation purposes.

TVS Motor Company Ltd *v* CCE [2012] TIOL 1639

Permitting the use of trademark on permanent basis would still qualify as 'intellectual property rights' services

The Delhi CESTAT held that a transaction permitting the use of the trademark 'Eicher' on a permanent basis though, for a limited purpose, where that trademark still remains the property of the licensor and the licensee is bound by the conditions of transfer in perpetuity, would qualify as 'intellectual property right' services and would thus be liable to service tax.

Eicher Good Earth Ltd *v* CST [2012] 28 STR 279 (Del)

Customs/ Foreign trade policy

Remission of duty available on goods destroyed in fire after out of charge order but before physical clearance of goods

The Chennai CESTAT has held that an importer is entitled to a remission of duty where goods have been destroyed in fire, after an out of charge order has been issued but before physical clearance of goods, as the goods cannot be said to have been physically cleared for home consumption.

CC *v* Avenue Impex [2012] 285 ELT 90 (Chny)

Customs authorities cannot unilaterally alter the DEPB scrip amount issued by DGFT authorities on the basis of export documents

The Bangalore CESTAT held that freight charges. including fuel surcharge charges, security charge for carrier, etc. are to be deducted from the cost insurance freight (CIF) value in order to arrive at the free on board (FOB) value of exported goods. Further, the customs authorities cannot unilaterally alter the duty entitlement pass book scheme (DEPB) scrip amount issued by the DGFT authorities on the basis of export documents. Such modification can be made only by referring the matter to the DGFT authorities.

Dr Reddy's Laboratories Ltd *v* CC [2012] 284 ELT 545 (Bang)

Notifications/ circulars

Refund of terminal excise duty available on deemed exports can be claimed by a recipient of goods, on production of documents

The central government has provided that a refund of terminal excise duty (TED) available on deemed exports can be claimed by the recipient of goods, on the production of an appropriate disclaimer being obtained from the supplier of goods, in the form ANF-8. This public notice is retrospectively effective from 1 March 2011. The format of ABF-8 has also been issued.

Public notice no 21 (RE-2012)/ 2009-2014 dated 21 November 2012

Following the rule book
Regulatory developments

FEMA

External commercial borrowings

A For low cost affordable housing projects: Approval route

The Reserve Bank of India (RBI) has allowed access to foreign loans/external commercial borrowings (ECB) for low cost affordable housing projects under the approval route. However, ECB proceeds shall not be utilised for the acquisition of land.

Highlights of this scheme are as follows:

Low-cost affordable housing project: Definition

- A project in which at least 60% of the permissible floor space index would be for units having a maximum carpet area up to 60 square meters.
- Slum rehabilitation projects will also be eligible under the low-cost affordable housing scheme based on the parameters to be set by competent authorities.

Aggregate limit

- For the financial year (FY) 2012-13, an aggregate limit of USD one billion shall apply.

Eligible borrowers	End use	Approval mechanism
Qualifying developers/ builders	• Low cost affordable housing project	• Eligible developers/ builders shall apply to the National Housing Bank (NHB) prescribed form • If satisfied with the application, the NHB forwards the application to the RBI for consideration and advises the borrower to approach the RBI to request ECB through the authorised dealer
Qualifying housing finance companies (HFCs)	• Financing low cost affordable housing units of individual borrowers, subject to the following: – A cap of INR 2.5 million – The cost of the individual housing unit must not exceed INR 30 million	• Application to RBI
National Housing Bank	• Financing low cost affordable housing units of individual borrowers subject to the following: – A capital of INR 2.5 million – The cost of the individual housing unit must not exceed INR 3 million • On-lending to developers/builders that are eligible borrowers under this scheme	• Application to RBI

Eligible borrowers would not be eligible to raise foreign currency convertible bonds (FCCBs) under this scheme.

A.P. (DIR series) circular no 61 dated 17 December 2012

B For 2G spectrum allocation

The ECB policy for successful bidders for the 2G spectrum auction has been relaxed, as follows:

- Refinancing of rupee loans: Automatic route: Upfront payment for the award of 2G spectrum initially made out of rupee loans received from domestic lenders can be refinanced with long-term ECB which is raised within 18 months from the date of the approval of the rupee loan by the domestic lender. This facility is subject to compliance with prescribed conditions.
- Relaxation in ECB-liability (debt)-equity ratio and percentage of shareholding: Automatic route: ECB can be received from their ultimate parent company (holding directly or indirectly minimum paid-up equity of 25%) by successful bidders, under the automatic route, for payment of 2G spectrum fees, without any cap based on the ECB liability (debt)-equity ratio.
- Bridge finance facility: Automatic route: A short-term foreign currency loan, in the nature of bridge finance, can be received under the automatic route for making upfront payment towards 2G spectrum allocation. The borrower can, under the automatic route, replace the short term loan with a long term ECB which is raised within a period of 18 months from the date of drawdown of the bridge finance.

A.P. (DIR series) circular no. 54 dated 26 November 2012

Trade credits for imports and ECB: All-in-cost ceiling/limits

The RBI has announced that the all-in-cost ceiling for ECB and trade credit as revised earlier will continue to be applicable till 31 March 2013. Thus, the all-in-cost ceiling presently applicable is as follows:

Average maturity period	All-in-cost ceilings over six months LIBOR*	
	External commercial borrowing	Trade credits
Up to one year	350 basis points	350 basis points
More than one year and up to three years		
More than three years and up to five years	500 basis points	Not applicable

Trade credits for import into India

Presently, infrastructure companies are eligible to receive trade credit contracted ab initio for not less than 15 months (up to a maximum period of five years) for the import of capital goods.

The RBI has now revised the eligibility criteria of 'ab initio' buyers' credit and reduced the period from 15 months to 6 months for existing trade credits. However, the condition regarding 'ab initio' buyers' credit for 15 months shall continue to apply to future trade credit.

A.P. (DIR series) circular no 59 dated 14 December 2012

Financial services

Revision of existing 40:20 investment limits in relation to plant and machinery/ equipment for lending to micro enterprises

The existing ceiling of lending to micro and small enterprises (MSEs) of a 40:20 proportions has been revised as follows:

Sector	Existing sub-targets for lending to the MSE sector	Revised sub targets for lending to the MSE sector
Micro and small enterprises (MSE)	• 40% of total advances to the MSE sector should go to micro (manufacturing) enterprises having investment in plant and machinery up to INR 0.5 million and micro (service) enterprises having investment in equipment up to INR 0.2 million. • 20% of total advances to the MSE sector should go to micro (manufacturing) enterprises with investment in plant and machinery above INR 0.5 million and up to INR 2.5 million, and micro (service) enterprises with investment in equipment above INR 2 million and up to INR 1 million.	• 40% of total advances to the MSE sector should go to micro (manufacturing) enterprises having investment in plant and machinery up to INR 0.1 million and micro (service) enterprises having investment in equipment up to INR 0.4 million. • 20% of total advances to the MSE sector should go to micro (manufacturing) enterprises with investment in plant and machinery above INR 1 million and up to INR 2.5 million, and micro (service) enterprises with investment in equipment above INR 0.4 million and up to INR 1 million.

RBI circular: RBI/2012-13/354 RPCD.MSME & NFS BC no 54/06.02.31/2012-13 dated 31 December 2012

Modifications in the existing provisions of know-your-customer norms

Opening of new accounts: Proof of identity and address: An indicative, but not exhaustive, list of the nature and type of documents/ information that may be relied upon for customer identification has been prescribed by the RBI. If the address on the document submitted to prove identity proof by the prospective customer is the same as that declared by him/her in the account opening form, the document may be accepted as a valid proof of both identity and address.

If the address indicated on the document submitted for identity proof differs from the current address mentioned in the account opening form, a separate proof of address must be obtained.

RBI circular-
RBI/2012-13/322
DBOD.AML.BC. no
65/14.01.001/2012-13
dated 10 December 2012

Review of the prudential guidelines on restructuring of advances by banks/ financial institutions

It has been decided to increase from 2% to 2.75% the provisioning requirement for restructured accounts classified as standard advances in the first two years from the date of restructuring. In cases where there is a moratorium on payment of interest/ principal after restructuring, such advances will attract a provision of 2.75% for the period of the moratorium and two years thereafter. Restructured accounts classified as non-performing advances, when upgraded to the standard category will attract a provision of 2.75% in the first year from the date on which they were upgraded, instead of the existing 2.00%.

RBI circular-
RBI/2012-13/322
DBOD.AML.BC. no
65/14.01.001/2012-13
dated 10 December 2012

Unhedged foreign currency exposure of corporates

Banks have been advised by the RBI that, in accordance with the guidelines of February 2012, they should put in place a proper mechanism to rigorously evaluate the risks arising from the unhedged foreign currency exposure of corporates, and should price them in the credit risk premium. They should also consider stipulating a limit on the unhedged position of corporates on the basis of banks' board-approved policy.

RBI circular-
RBI/2012-13/302
DBOD.BP.BC.no
61/21.04.103/2012-13
dated 21 November 2012

Non-performing assets and restructuring of advances

The RBI has announced that banks should strictly adhere to the instructions regarding sharing amongst themselves of information relating to credit, derivatives and unhedged foreign currency exposures and should put in place an effective mechanism for information sharing. Any approval of fresh loans/ad hoc loans/ renewal of loans to new/ existing borrowers with effect from 1 January 2013 should be made only after obtaining/sharing necessary information.

RBI circular-
RBI/2012-13/304
DBOD.BP.BC.no
62/21.04.103/2012-13
dated 21 November 2012

Definition of infrastructure lending revised

As indicated in the second quarter review of the Monetary Policy 2012-13, the RBI has decided to harmonise the definition of 'infrastructure lending for the purpose of financing of infrastructure by banks and financial institutions' with that of the Master List of Infrastructure sub-sectors' announced by the government of India on 27 March 2012. The exposure of banks to projects under sub-sectors which were included under our previous definition of infrastructure, but not included under the revised definition, will continue to receive the benefits under 'infrastructure lending' for such exposures till the completion of the projects. However, any fresh lending to those sub-sectors from the date of this circular will not qualify as 'infrastructure lending'.

RBI circular-RBI/2012-13/297DBOD.BP.BC.no 58/08.12.014/2012-13 dated 20 November 2012

Amendments to SEBI (Mutual Funds) Regulations, 1996

Presently, the guidelines on a prudential limit for sectoral exposure in debt oriented mutual fund schemes which have been issued apply a limit of 30% at the sector level. However, in light of the important role played by housing finance companies (HFCs) in the housing sector, it has been decided that an additional exposure not exceeding 10% of net assets of a scheme shall be permitted to HFCs that are part of the financial services sector, in respect of the prudential limits of debt oriented schemes. The brokerage and transaction cost incurred for the purpose of the execution of a trade may be capitalised to the extent of 12bps and 5bps for cash market transactions and derivatives transactions, respectively. Any payment towards brokerage and transaction costs, over and above 12bps and 5bps for cash market transactions and derivatives transactions respectively, may be charged to the scheme so long as this does not exceed the maximum limit of the total expense ratio (TER) prescribed by regulation 52 of the SEBI (mutual funds) Regulations, 1996. Any expenditure in excess of the prescribed limit (including brokerage and transaction costs, if any) shall be borne by the AMC or by the trustee or sponsors. In terms of the new regulations, the exit load charged, if any, would be credited to the scheme. Accordingly, Para-4(c) of SEBI circular SEBI/IMD/CIR no 4/168230/09 dated June 30, 2009 has been withdrawn.

SEBI circular - CIR/IMD/DF/24/2012 dated 19 November 2012

Debt allocation mechanism for financial institutional investors

In light of the representations received and in order to provide operational flexibility to those financial institutional investors (FIIs)/sub-accounts which did not hold any debt investment limits as on 3 January 2012 and purchased debt investment limits thereafter, it has been decided that they shall be allowed a cumulative re-investment facility to the extent of 50% of their maximum debt holding at any point of time during the calendar year 2013.

SEBI circular - CIR/IMD/FIIC/1/2013 dated 1 January 2013

Application supported by blocked amount facility in public rights

It is clarified that for making applications by banks on own account using blocked amount facility (ASBA) facility, self-certified syndicate banks (SCSBs) should have a separate account in their own name with any other SEBI registered SCSB/s. Such accounts should be used solely for the purpose of making applications in public issues and clear demarcated funds should be available in such accounts for ASBA applications.

SEBI circular - CIR/CFD/DIL/1/2013 dated 2 January 2013

Rationalisation process for obtaining PAN by investors

With a view to bring about operational flexibility and in order to ease the PAN verification process, intermediaries may verify the PAN of their clients online on the income tax website and thus need not insist on being supplied with the original PAN card, provided that the client has presented a document showing proof of identity which is not a PAN card.

SEBI circular - CIR/CFD/DIL/1/2013 dated 4 January 2013

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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