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Editorial

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

In the face of a challenging economic environment coupled with the upcoming central elections, the finance ministry released yet another draft of the proposed Direct Taxes Code (the code). However, it's difficult to see the point of introducing the code at this juncture when a new government is likely to be formed within a few weeks from now. Earlier, the Union Finance Minister (FM), P Chidambaram had presented his interim budget for the financial year 2014-15. Apart from a few excise cuts to help the consumer durables and automobile industries, no changes were announced (and none were expected) with regard to direct taxes. The primary purpose of this budget was to 'vote-on-account' so that the government had funds to function while the country elected a new parliament.

In order to encourage domestic production of mobile handsets, the FM reduced excise duty. Considering the uncertainty perceived by MNCs operating in India, the present Government has partially addressed their woes by inking a few Advance Pricing Agreements (APAs) as one of its last actions before handing over the reins to the newly elected parliament. These APAs are a contractual method of preventing transfer pricing disputes between income-tax authorities and the multinationals concerned.

A new draft model of the Bilateral Investment Protection Agreement has been released by the finance ministry in March 2014, to limit the benefits available to foreign investors under bilateral treaties to only those entities that are directly incorporated in India according to local laws, in order to prevent those carrying out offshore transactions involving Indian assets enjoying tax benefits. The idea is to ensure that benefits of bilateral investment agreements are made available only to entities that have India as a tax domicile.

A new international standard for sharing of tax data has been framed by the Organisation for Economic Cooperation and Development, which was endorsed by the G-20 (including India) on 23 February 2014. The framework aims at making it harder to make effective use of tax havens around the world. This new, radically different system intends to prevent wealth from flowing into financial 'black holes' through a systematic global regime of information sharing.

Ketan Dalal

Shyamal Mukherjee

March also saw Barack Obama's government release a draft reform plan that eliminates several tax breaks. The plan is seen as a step towards reducing corporate and individual tax rates, reforming United States international tax rules, and simplifying the tax code. It has proposed fewer tax breaks and the use of tax savings to pay in part for more aid to low-income workers.

In 2014, the global economy has been in a better shape than 2012 and 2013. India too has forecast its gross domestic product to grow at 5.6% in fiscal year 2014-15 as compared to growth of less than 5% that is expected in the current fiscal year. The economic growth is likely to be due in large part to the contribution made by the industrial sector, which is estimated to grow by 4.1%.

The Reserve Bank of India (RBI) has introduced a framework that comprises an outlined corrective action plan for banks that will incentivize early identification of problematic accounts, efficient restructuring of accounts that are considered to be viable, and taking of prompt steps by lenders for recovery or sale of unviable accounts. This framework will be fully effective from 1 April 2014. In the light of this framework, the RBI has also issued guidelines for non-banking financial companies, indicating the extent to which the framework is applicable to them.

The High Court, in the case of Kirloskar Computer Services Limited, allowed expenditure incurred for the set-up of a new V-SAT facility for improving data transfer speed as revenue expenditure, in spite of the enduring benefit that is derived. Also, the interest on loans borrowed for setting-up the V-SAT facility was allowed as a business deduction under section 36(1)(iii) of the Income-tax Act, 1961. In another ruling in the case of AON Specialist Services Private Limited, the Bangalore Bench of the Income-tax Appellate Tribunal held that tax would not be withheld where salary costs are reimbursed within any mark up to foreign group company. See page nos. 7 and 6 respectively for a detailed analysis of these rulings.

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

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

Analysing tax issues
Corporate tax

Tax withholding on reimbursements of salary costs

No tax withholding where salary costs reimbursed without any mark up to foreign group company

ITO *v.* AON Specialist Services Pvt. Ltd. [TS-90-ITAT-2014(Bangalore - Tribunal)]

Facts

The taxpayer was engaged in providing technology enabled analytical services as well as product research and support services. During the relevant year, the taxpayer made payments for salary reimbursement of seconded employees of its foreign group company without withholding tax, and claimed such payment as deduction. The tax officer (TO) held that since the persons seconded were employees of a foreign company, payments were not in the nature of reimbursement of salary expenses, but were salaries. Hence, the payments were liable for tax withholding under section 195 of the Act. Since the taxpayer had failed to withhold the tax, the TO disallowed the salary payment under section 40(a)(ia) of the Act.

Held

In Abbey Business Services (India) Private limited [ITA No. 1141/Bang/2010] had elaborately the question of taxpayer's responsibility for incurring the expense towards the employees necessitating the reimbursement of cross charges. In this decision, the Income-tax Appellate Tribunal (Tribunal) had in turn relied on the decision of IDS Software Solutions India Pvt. Ltd. *v.* ITO [2009] 122 TTJ 410 (Bangalore-Tribunal), where it had been held that the Indian company should be regarded as the real and economic employer of the secondees and the payments thus made by the taxpayer were in the nature of reimbursement of salary and other costs; and that the reimbursements made to the foreign company under secondment were not liable for tax withholding. Following this principle, the taxpayer should be considered as the economic employer of the persons working for it and seconded by the foreign company. Accordingly, the reimbursements of salary costs without any profit element did not constitute income in the hands of the foreign group company. Therefore, the salaries paid to seconded employees of the foreign group company were reimbursements to the foreign company, and hence not liable for tax withholding under section 195 of the Act, and consequently not liable for disallowance under section 40(a)(ia) of the Act.

Liaison office promoting sales of foreign company in India liable for tax in India

Liaison office held on facts to be promoting sales of foreign company in India and hence liable to tax on receipts in excess of actual cost reimbursement

Brown & Sharpe Inc. *v.* ACIT [2014] 41 taxmann.com 345 (Delhi - Tribunal)

Facts

The taxpayer, a foreign company, started a liaison office (LO) in India with the RBI's permission, to act as a communication channel with its customers or prospective customers in India. The RBI had provided permission on the condition that the taxpayer would not render consultancy or other services, directly or indirectly. During the relevant year, the taxpayer was reimbursed expenses incurred by the LO on its behalf. The Revenue submitted that the LO was not simply a communication channel, but was being used to promote and sell the taxpayer's products. As the taxpayer's LO was registered with the Registrar of Companies, and it had filed tax returns for several years, income arising from the LO in India was considered liable to tax in India. The taxpayer contended that its LO only received reimbursement of its expenses from the head office, and hence, it was not liable to be taxed.

Held

The Tribunal rejected the taxpayer's contention and held that:

- The taxpayer's records clearly showed that LO employed a Client Representative Officer as also a technical expert;
- Employees were offered a Sales Incentive Plan with incentives for achieving sales targets, and their performance was judged based on orders secured;
- The taxpayer had declared business loss in its tax returns, implying that it had derived income from a business in India; and
- The LO was registered with the Registrar of Companies

whose certificate notified establishment of a place of business in India.

These findings clearly demonstrated that the taxpayer's LO was promoting the taxpayer's sales in India, making the taxpayer liable to be taxed in India. The amount received by the LO from the taxpayer, in excess of actual reimbursement of expenses would therefore be taxable in India.

V-SAT expenses allowed as revenue expenditure

Set-up expenditure of V-Sat to increase the data transfer speed of existing telephonic connectivity allowed as revenue expense

CIT *v.* Kirloskar Computer Services Ltd. [2014] 41 taxmann.com 494 (Karnataka)

Facts

The taxpayer was a limited company offering services of data transfer in and out of the office, using facilities of telephonic connectivity. It took a loan and set up a V-Sat facility to greatly increase the data transfer speed, and for this purpose, it paid site and bandwidth charges, which were in the nature of a license fee. The taxpayer claimed deductions of the amount spent on the V-Sat facility and of interest on loan borrowed for setting up of this facility, claiming that these were revenue expenditure. The TO held the expense to be capital in nature as the new facility was a new project, and resulted in an enduring benefit. The TO also denied deduction of interest on the loan as the machinery purchased had been added to the business assets.

Held

The Tribunal had rightly observed that the taxpayer used telephone lines for receiving and sending data, and had set up the V-Sat facility to increase data transfer speed. The new facility was part of the taxpayer's existing business. Since the expense was incurred in the context of switchover to the new technology of the same business, the HC held that the license fee paid by the taxpayer for the new technology would be revenue in nature, though it resulted in an enduring benefit.

The Tribunal also held that the interest paid on the loan for setting up the facility had to be allowed. The HC upheld the Tribunal's order on this point too, relying on Supreme Court (SC) ruling in the case of DCIT *v.* Core Health Care Ltd. [2008] 298 ITR 194 (SC), wherein the SC had held that the taxpayer would be entitled to deduction under section 36(1)(iii) of the Act as it stood before the proviso was inserted therein by Finance Act 2003, in relation to money borrowed that was used for the purpose of the business, though the taxpayer had not used the machinery in the year of borrowing.

Deemed profit excludes 'service tax'

While calculating deemed profit, gross receipts under section 44BB includes all reimbursements charges, but excludes 'service tax'

Pride Foramer SAS *v.* ACIT [2014] 43 taxmann.com 381 (Delhi - Tribunal)

Facts

The taxpayer, a foreign company, was engaged in executing a contract with ONGC Ltd for offshore drilling operations relating to mineral oil in India. For the relevant year, the taxpayer had computed its income according to the provisions of section 44BB of the Act applying the deemed net profit rate at 10% of gross revenues.

The TO made the following additions to gross receipts while calculating taxable profits under section 44BB of the Act:

- Reimbursement of service tax
- Reimbursement of communication charges and repair/cost of equipment
- Mobilisation fee for work carried out by the taxpayer outside India

Held

The Tribunal's conclusions were as follows:

- **Reimbursement of service tax**

  The Tribunal relied on the co-ordinate bench ruling in the case of Sedco Forex Drilling Inc. *v.* ADIT [2012] 139 ITD 188 (Delhi), where it was held that service tax, being a statutory liability, could not form part of the gross receipts for the purpose of deemed profit under section 44BB. Accordingly, the Tribunal excluded the reimbursement of service tax from the total gross receipt.

- **Communication charges and equipment charges**

  The Tribunal upheld the TO's order for the inclusion of communication charges and equipment charges in gross receipts for the calculation of taxable profits under section 44BB by relying on the decision given in the case of CIT *v.* Halliburton Offshore Service Inc. [2008] 300 ITR 265 (Uttaranchal), where the HC had clarified the difference between 'the receipt' and 'the income'. The HC held that all the receipts were mutually inclusive for the purposes of calculating deemed profit.

- **Mobilisation fees**

  The Tribunal noted that the issue of mobilisation fees was ruled against the taxpayer by the Uttarakhand HC in its own case for which it had relied on the decision in the case of Sedco

Forex Inc. *v.* CIT 299 ITR 238 (Uttarakhand). The taxpayer's contention that it should have been given the benefit of the tax treaty did not hold force as the issue had already been decided by the HC. Therefore, mobilisation charges were held to be includible while calculating the income as stated under section 44BB of the Act.

Activities limited to procurement of goods for purpose of export not liable to be taxed

No income could be said to be derived in India through a Liaison Office whose activities are limited to procurement of goods for purpose of export

Tesco International Sourcing Limited *v.* DDIT (IT) [2014] 41 taxmann.com 241 (Bangalore - Tribunal)

Facts

T Ltd, a foreign company, was established as a buying agent for T group companies. The taxpayer was an LO in India for T group companies. It acted as a communication channel between T Ltd and apparel manufacturers from India. It also undertook liaison activities such as coordinating with manufacturers and the head office. The TO, on the basis of survey proceedings, held that the taxpayer's activities were not only related to the purchase of goods in India for the purpose of exports, but also involved supply chain management activities for T Ltd. These activities were not covered by the Explanation 1(b) to section 9(1)(i) of the Act, meaning that the taxpayer constituted a PE of T Ltd. in India and its income would be deemed to accrue or arise in India.

Held

The Tribunal held that Explanation 1(b) to section 9(1)(i) stated that where a non-resident's activities were limited to procurement of goods for the purpose of being exported, the income would not be deemed to accrue or arise in India. The Tribunal relied on the decision made in the case of Fabrikant and Sons Ltd. [ITA No. 4657 to 4660 and 3342/Mum/2007] wherein it had been held that when the activities of an LO were confined to procurement of goods being exported, the case would be fully covered by Explanation 1(b) to section 9(1)(i). In this case, the taxpayer had only performed very minor activities, such as liaising between the manufacturer and vendor, giving an opinion on the reasonability of prices, monitoring the progress and quality at the manufacturing end, etc., which is what the LO had been doing prior to the purchase of goods by T Ltd, meaning that it was entitled to claim exemption under Explanation 1(b) to section 9(1)(i) of the Act. Accordingly, it was held that no income was derived by the taxpayer through its operations as an LO in India. As no income was derived in India, the question of attribution of income became superfluous.

Taxability of marketing fees and reimbursement of expenses to foreign company

No tax withholding on payment of marketing fees and reimbursement of expenses to foreign company for services rendered outside India as it is classed neither as royalty nor FTS

ACIT *v.* V.M. Salgaocar & Bro. Pvt. Ltd. [TS-100-ITAT-2014(Panaji - Tribunal)]

Facts

The taxpayer, an Indian company, had made a payment towards a marketing service fee and reimbursed expenses to a foreign company for sales and marketing services provided from outside India, without withholding tax, on the basis of a certificate issued by a Chartered Accountant. The TO disallowed the payment on the basis that unless the taxpayer obtained a certificate under section 195 of the Act from the Revenue authority, tax withholding was mandatory and such payments made without withholding tax were disallowable under section 40(a)(ia).

Held

The Tribunal observed that the taxpayer had made two types of payments to the foreign company, one related to services rendered outside India and the other related to reimbursement of expenses. It held that tax withholding was inapplicable on these payments since the sales and marketing services were rendered outside India, and the taxpayer neither transferred technology rights, plans or designs in India, nor made available any technical knowledge, experience, skill, etc., meaning that these services could not be regarded as royalties within the scope of section 9(1)(vi) of the Act.

It also noted that the foreign company did not render any managerial, technical or consultancy services in India and therefore payments to them could not be regarded as FTS as defined under section 9(1)(vii) of the Act. Therefore, the income received by the foreign company could not be deemed to accrue and arise in India.

The Tribunal also held that reimbursement of expenses did not involve any income or profit element, meaning that no tax was required to be withheld within the meaning of section 195 of the Act.

Discounting / factoring charges not liable for tax withholding

Discounting / factoring charges incurred by Del Credere agent are not 'interest'; hence no tax withholding under section 194A

ITO *v.* M K J Enterprises Ltd. [2014] 42 taxmann.com 460 (Kolkata – Tribunal)

Facts

The taxpayer, a *Del Credere* agent, was selling steel products produced by M Ltd. According to the *Del Credere* arrangement, payment to M Ltd. was to be made by the taxpayer after collecting from clients who had purchased the products of M Ltd through the taxpayer. The bill of purchase, for which payment was to be received by the taxpayer, was to be discounted with L Financial for which discounting/ factoring charges were to be paid to L Financial. The taxpayer claimed discounting/factoring charges paid to L Financial as business expenditure. The TO held that factoring / discounting charges were 'interest' expenses on which tax was liable to be withheld under section 194A of the Act. Hence, it disallowed the expenses under section 40(a)(ia) on the taxpayer's failure to withhold tax.

Held

The Tribunal held that according to section 2(28A) of the Act, interest meant a sum payable in respect of any money borrowed or debt incurred. However, in the present case, the taxpayer had merely discounted sale consideration receivable on sale of goods with L Financial. It was not a case where money had been borrowed, a debt had been incurred, or there was a credit facility that had not been utilised. Also, the Legislature included discount of bills of exchange (BE) within the definition of 'interest' wherever it deemed fit. As 'interest' defined under section 2(28A) of the Act did not include discounting charges on discounting of BE, it could not be treated as 'interest'.

The Tribunal also noted that, in the present case, the taxpayer had offered income from *Del Credere* trade in goods and merchandise as also from dealing in securities as income from business, and not as income from other sources. Accordingly, the Tribunal stated that the expenditure incurred would also be business expenditure, and not interest expenditure. Therefore, discount/ factoring charges was not "interest" and hence, would not come within the scope of section 194A of the Act.

Applicability of retrospective amendment on tax withholding liability

A retrospective amendment cannot change the tax withholding liability with retrospective effect, even though it can change the tax liability of an income in this way

DCIT *v.* Virola International [2014] 42 taxmann.com 286 (Agra - Tribunal)

Facts

The taxpayer was an exporter of leather footwear and footwear uppers. It had made payments to various non-residents towards 'design and development expenses' and claimed it as deductible. The TO held that the taxpayer was under an obligation to withhold tax while making the above payments as stated in section 195 read with section. 9(1)(vii) of the Act. Since the taxpayer had failed to withhold tax, the payments were disallowed as deduction under section 40(a)(i) of the Act. The CIT(A) deleted the disallowance on the grounds that tax was not required to be withheld while making the above payments since these payments were not fees for technical services (FTS). The Tribunal referred to the case of Ishikawajima Harima Heavy Industries Ltd. *v.* DIT [2007] 288 ITR 408 (SC) where it had been held that FTS could be taxed in India only if these services were both, utilised and rendered in India. Subsequently, an amendment was made to Explanation to section 9(1) by the Finance Act, 2010 that income of a non-resident shall be deemed to accrue or arise in India if these services were utilised in India, even if services were not rendered here.

Held

The Tribunal observed that the amendment was retrospective in nature but tax withholding liability depended on the law as it existed at the point of time when payments, from which taxes ought to have been withheld, were made. A retrospective amendment in law did change the tax liability of an income with retrospective effect but it could not change the tax withholding liability in this way. Therefore, the Tribunal held that since payments were made before the Finance Act, 2010 came into force, the taxpayer was not under any tax withholding obligation under section 195 of the Act from foreign remittances, unless these services were rendered in India. Since no records were found that proved this, no disallowance could be made under section 40(a)(i) of the Act as this could be made only when the taxpayer had an obligation to withhold tax but had failed to comply.

Exempt income

No case of treaty shopping or tax avoidance, if the income itself is exempt from tax in India

DIT (International Transaction) *v.* Goodyear Tire and Rubber Co. [2014] 360 ITR 159 (Delhi)

Transfer of shares of an Indian company listed on a recognised stock exchange in India, between two non-resident group companies outside India, would not result in income chargeable to tax in India since this would otherwise be exempt from tax under section 10(38) of the Act.

Facts

The taxpayer company incorporated in the United States of America holds 74% of the shares in an Indian listed company, Goodyear India Limited. The assessee proposed to transfer these shares to its 100% subsidiary in Singapore without consideration. For this, it approached the Authority for Advance Rulings (AAR) to understand the tax implications on the proposed transfer of shares. The AAR ruled that there would be no tax liability on the proposed transaction. The Department challenged the advance ruling pronounced by the AAR by filing a writ petition before the Delhi HC.

Held

The Delhi HC considered the point made by the AAR that even if consideration was paid for the transfer of the above mentioned listed shares, the income arising from this would still be exempt by virtue of the provisions of section 10(38) of the Act, being long-term capital gains subject to Securities Transaction Tax. The Delhi HC quashed the Department's argument that the transaction was proposed to be undertaken by the taxpayer company to avoid being taxed in India, considering that under the India-Singapore tax treaty, capital gains would only be taxed in Singapore and not India.

Considering the facts and ruling pronounced by the AAR, the Delhi HC refrained from interfering in the advance ruling pronounced by the AAR and the writ petition was dismissed.

Editor's note: *The Delhi HC has refrained from interfering with the Advance ruling and held that the transfer of shares (even without consideration) is not taxable. Further, a transaction cannot be held to be a colourable transaction entered with a view to avoid tax if it is not subject to tax in the first place. Having said the above, neither the HC nor the AAR has commented on the fact that if listed shares are not sold on the stock exchange, exemption from long term capital gains would not be available.*

Nature of income

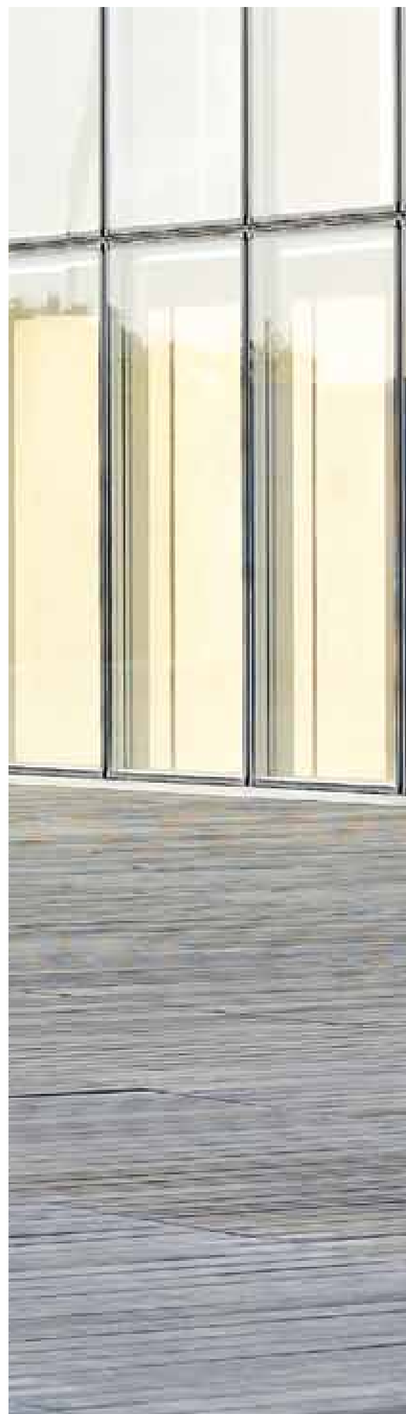
Income from an isolated lending transaction cannot be characterised as business income; losses on trading in shares not deemed to be speculative losses if income consists mainly of income from other sources

CIT *v*. Paranjay Mercantile Limited [TS-69-HC-2014 (Gujarat)]

An isolated transaction of advancing a loan on which interest income was earned and mistakenly classified as business income would not mean that the taxpayer is engaged in the business of advancing loans. Such interest income ought to be treated as income from other sources. If an taxpayer has incurred loss on account of trading in shares and their gross total income consists mainly of income from other sources, then such loss on account of trading in shares is not covered by the Explanation to section 73 of the Act and thus is not speculative in nature.

Facts

The taxpayer is involved in the business of trading of shares. During the relevant year, the taxpayer incurred loss on trading in shares and also earned income from interest on a loan advanced to one party. The interest income was mistakenly characterised as business income by the taxpayer. The share trading loss was set off against interest income. However, the TO observed that loss on trading in shares was covered by the Explanation to section 73 of the Act and therefore was deemed to be speculative loss. Accordingly, the TO denied the benefit of set-off against interest income. The CIT(A) affirmed the order of the TO. Ruling in favour of the taxpayer, the Tribunal held that interest income earned by the taxpayer ought to be characterised as income from other sources. Furthermore, the Tribunal held that the Explanation to section 73 as is relevant for the present appeal does not apply in a case where gross total income (GTI) mainly consists of income which is chargeable under the head income from other sources. The Tribunal observed that this was the case in terms of the taxpayer's GTI. Therefore, the Explanation to section 73 would be inapplicable. Aggrieved, the

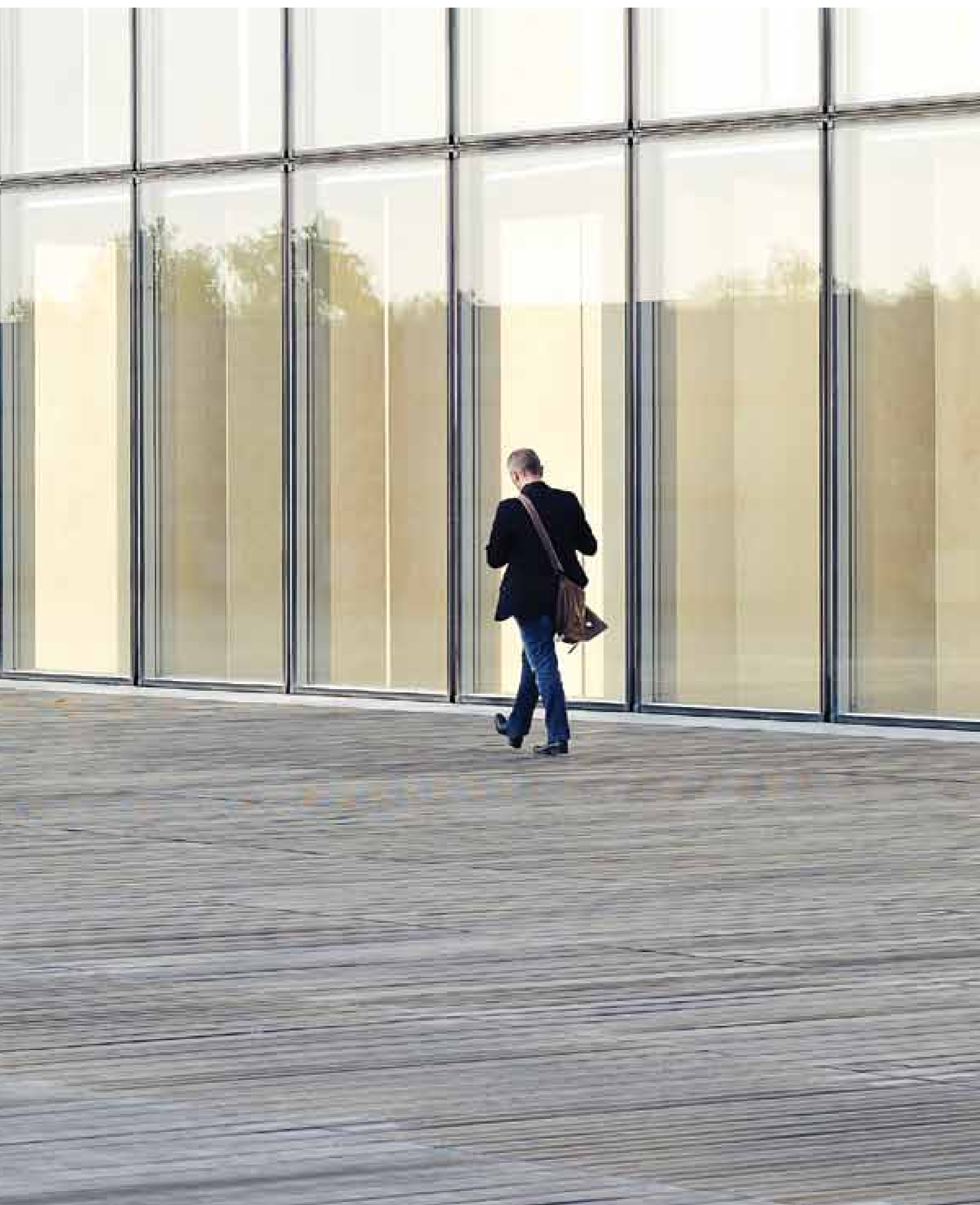


Revenue preferred an appeal before the Gujarat HC.

Held

On account of an isolated instance of earning interest income on a loan advanced, it could not be concluded that the taxpayer was in the business o f advancing loans and earning interest. Therefore, the Tribunal rightly characterised such interest income as income from other sources. The transactions entered into by the taxpayer did not fall under the definition of speculative transaction provided under section 43(5) of the Act as they were settled by actual delivery. Therefore the loss on trading in shares could be considered speculative loss only if this was covered under the Explanation to section 73 of the Act. Once the interest income earned by the taxpayer was characterised as income from other sources, then the GTI of the taxpayer would mainly consist of income from other sources. The Explanation to section 73 of the Act is not attracted in the case the GTI of an taxpayer mainly consists of income from other sources. Therefore, the deeming fiction of section 73 of the Act would not apply to the taxpayer and the loss on account of trading in shares could not be treated as speculative loss.

Editor's Note: *A company engaged in trading of shares can set off losses from such trading against income from other sources as this would not fall within the purview of Explanation to section 73 of the Act. However, if it has also earned income mainly from business activities, then the Explanation to section 73 would be attracted and the loss on account of trading in shares would be deemed to be speculative in nature.*



Assessing personal tax

Personal taxes

Residential Status

Where the taxpayer had come to India after leaving employment outside India, stay in India would not be considered as a visit

Mrs. Smita Anand, China, *In re* [2014] 42 taxmann.com 366 (AAR – New Delhi)

Where the taxpayer came to India after leaving employment outside India, and had stayed in India for sixty days or more during the previous year, and for three hundred and sixty five days or more within four preceding years, the taxpayer could be considered as resident in India.

Facts

The taxpayer, an Indian citizen, worked with Hewitt India till September 2007 and thereafter joined Hewitt China in October 2007. During her employment in China, she visited India and her stay in India in a particular financial year never exceeded 182 days and she qualified as a non-resident. She returned to India on 12 February 2011, after resigning from her employment in China with effect from 31 January 2011. During the FY 2010-11, her total stay in India was 119 days and her total stay in India during the preceding four FYs was 407 days. She claimed to be a non-resident. In the FY 2010-11, the taxpayer realised proceeds from an exercise of ESOPs/ RSUs which were awarded by Hewitt China while she was employed in China. The entire grant, vesting and exercise of the ESOPs/RSUs happened during the course of her employment with Hewitt China. The proceeds received in the US were remitted to India. The taxpayer sought an advance ruling on whether the proceeds from ESOPs/ RSUs were taxable in India considering that she considered herself to be a non-resident in India under the terms of Explanation (b) to section 6(1)(c) of the Act, which provided that *"any Indian citizen or person of Indian origin who being outside India, comes to a visit to India in any previous year, the "sixty days" limit mentioned in section 6(1)(c) will be substituted with "one hundred and eighty two days".*

Held

The taxpayer's case did not fall under Explanation (b) to section 6(1)(c) of the Act as she came to India after resigning from China and therefore, having fulfilled the requirements of section 6(1)(c) of the Act, her status was that of a resident in India. The AAR also opined that the taxpayer's reason for staying in India (to visit relatives and friends) would not be covered by *'visit'* under Explanation (b) as she came to India after resigning from employment in China. Furthermore, the taxpayer's contention that her stay in India was a *visit* because she held an employment visa till March 2012, and was actively searching for jobs outside India, was also discarded by the AAR, which declared that such activities were not necessarily proof of a visit, as a person staying in India also undertook these activities. The AAR also rejected the applicability of the case laws cited (i.e. Anurag Chaudhary, *In re* [2010] 232 ITR 293(AAR) and Manoj Kumar Reddy *v*. ITO [2009] 132 TTJ 328 (Bangalore-Tribunal)) on the basis that the facts of the taxpayer's case were different. Consequently, the AAR concluded that the proceeds remitted to India on conversion of ESOPs and RSUs awarded to the taxpayer by her employer in China were taxable in India.

Scope of income

Salary income accrues where services are rendered and, if brought into India after accrual abroad, it is not taxable on receipt basis

Arvind Singh Chauhan *v*. ITO [2014] 42 taxmann. com 285 (Agra – Tribunal)

In a recent decision, the Agra Tribunal has held that salary received by a non-resident working on a vessel plying international routes was not taxable in India as the salary accrued outside India. The taxpayer had the lawful right to receive his salary outside India and therefore, merely its subsequent deposit or remittance by the employer into his bank account in India does not imply that the salary was received in India. The Tribunal also held that receiving an appointment letter in India did not imply that the taxpayer had the right to receive the salary in India.

Facts

For the AY 2009-10, the taxpayer was employed with Executive Ship Management Pte Ltd, Singapore (ESM-S). He worked on merchant vessels and tankers plying international routes. In addition to the salary income from ESM-S, the taxpayer also received bank interest and a pension from the Indian Army, his former

employer. The taxpayer's stay in India during the previous year relevant to AY 2009-10 was less than 182 days. He accordingly qualified as an Indian non-resident (NR). In the tax return filed by the taxpayer, his bank interest and pension income were offered to tax in India on receipt basis under section 5 of the Act. However, his salary income was not offered to tax as it related to services performed outside India. During the scrutiny assessment, the TO brought the salary income under the ambit of income taxable in India and made an addition to the taxpayer's total income. The TO also made an addition to the interest income earned and credited to his NRE account. The CIT(A) upheld the order of the TO. The taxpayer filed an appeal before the Tribunal against the order of the CIT(A).

Held

The Tribunal held that salary was a compensation paid for services rendered by an employee and therefore the location of its accrual was the location where the services were provided. Unless the services are rendered, no such right accrues to the employee. The taxpayer had the right to receive salary income when he rendered the services and not when he simply received an appointment letter. The Tribunal held that when salary had already accrued outside India, thereafter, a mere arrangement for remitting salary to India did not constitute receipt of salary in India so as to trigger taxability under section 5(2) of the Act.

Editor's Note: *In this judgment, the Tribunal has reached an important conclusion that mere receipt of salary income will not make it taxable in India if the services are rendered outside India, and salary is paid by a foreign employer.*

Exemption under section 54F of the Act

Section 54F of the Act: exemption granted for a residential house property which was subsequently used for commercial purposes

Shyamlal Tandon *v.* ITO [TS-34-ITAT-2014 (Hyderabad)]

The taxpayer, along with his son, acquired a piece of land and sold that land to acquire a share in a building constructed on that land. The building constructed was a residential house. However, the building was used for commercial purposes in later years. The TO denied exemption under section 54F of the Act, stating that the building was a commercial property. The order was upheld by the CIT(A), who stated that although the property was shown as a residential house, it was used as a hotel, and also, as was clear from the location of the property and information available on websites, the property was commercial. The Tribunal held that the taxpayer was entitled to exemption under section 54F of the Act if what was sought to be acquired and was originally acquired was a residential property, even if the property was later used for commercial purposes.

Facts

The taxpayer did not file his tax return for AY 2003-04. According to information available to the TO, the taxpayer had earned capital gains but those gains were not disclosed in a tax return and, consequently, proceedings were initiated under section 147 of the Act for taxing income escaping assessment. The taxpayer filed a tax return declaring 'Nil' income and submitted that the taxpayer had purchased a piece of land and had entered into a development agreement regarding the land. After the construction was completed, the taxpayer received a share in an area in the building and the building was leased to the developers. However, the transfer of rights for the land was not shown as capital gains. The TO made an addition on the transfer of rights of land as long-term capital gains. On appeal, the CIT(A) upheld the TO's order.

Held

The Tribunal held that at the time of purchase, the property was residential, even though the property was subsequently leased and used for non-residential purposes. On that basis, deduction under section 54F of the Act could not be denied, as held by Delhi Tribunal in the case of Mahavir Prasad Gupta *v.* JCIT [2006] 5 SOT 353 (Delhi-Tribunal). Accordingly, the appeal was decided in favour of the taxpayer, subject to satisfaction of other conditions of section 54F of the Act.

Editor's Note: *The decision in this case clarifies that exemption for a construction/ purchase of a residential house property under section 54F of the Act cannot be denied while calculating capital gains merely because that property was subsequently used for commercial purposes.*

Structuring for companies

Mergers and aquisitions

Case law

Depreciation on goodwill/ copyright/ trademarks

Classification of intangibles, whether as goodwill or as copyrights/license, would not affect the quantum of depreciation as goodwill is also an intangible asset which is eligible for depreciation

DCIT *v*. Worldwide Media Pvt. Ltd. [TS–56-ITAT-2014 (Mumbai – Tribunal)]

Facts

The taxpayer is a joint venture company between Bennett, Coleman & Co. Ltd (BCCL) and BBC Worldwide Ltd (BBC) and is engaged in the business of the printing, distribution, marketing of magazines, and organizing events. During AY 2004-05, the taxpayer acquired a magazines and events division from BCCL at a price of INR 910 million on a slump sale basis. Of this amount, INR 110 million was attributable to the business' net current assets and the balance was paid towards acquisition of copyrights and trademarks. The taxpayer claimed depreciation on the value of these newly acquired intangible assets.

The TO invoked the provisions of ***Explanation 3 to section 43(1) of the Act***, and held that some part of the purchase consideration was for goodwill. The TO estimated the value of goodwill at INR 250 million and disallowed depreciation on that amount.

Held

The Mumbai Tribunal observed that the key aspect to consider was that the Revenue had not disputed the purchase consideration or its attribution towards the value of current assets. What had been disputed was the classification of the intangible assets as copyright or trademark or goodwill and the allowability of tax depreciation in that regard. The Tribunal went on to say that they did not agree with the taxpayer's contention that no goodwill had arisen as a result of the transaction. The Tribunal held instead that goodwill could also be in the form of copyrights, patents, trademarks, etc. However, since there was no difference in the rate of depreciation for goodwill and copyrights/ trademarks, the dispute regarding classification was immaterial and inconsequential.

The Tribunal held that the issue of tax deductibility of depreciation on goodwill had been settled by the SC in the case of CIT *v*. Smifs Securities Ltd [2012] 348 ITR 302 (SC).

Since depreciation is allowed at 25% on goodwill as well as on copyrights and trademarks, the very premise of invoking the provisions of Explanation 3 to section 43(1) was vitiated. Thus, the Tribunal allowed depreciation on the entire amount attributable to the acquisition of intangibles.

Editor's note: *The Mumbai Tribunal followed the ruling of Apex Court in the case of Smifs Securities Ltd (referred to above) and allowed depreciation on goodwill/ copyrights and trademarks, thus removing any doubt as to the application of a decision of the Apex Court being clear guidance in support of a depreciation claim in respect of goodwill.*

Amount received by retiring partners in excess of their capital account balance is a capital receipt not chargeable to tax

ACIT *v*. P. Sivakumar [2014] 43 taxmann.com 211 (Chennai - Tribunal)

Amount received by retiring partners in addition to the settlement of their capital accounts is their share in the value of the business and is a capital asset (which may also include goodwill) and, as such, is a non-taxable capital receipt.

Facts

During 2007-08, the taxpayer retired from a partnership firm. The taxpayer was paid a certain amount in addition to the amount lying in his capital account. While completing the assessments, the TO invoked section 28(va) of the Act and treated the amount received in excess of the capital account as business income as all the partners had agreed to discontinue any activity in relation to any business. On appeal, the CIT(A) held that this agreement was in the nature of a family arrangement and therefore could not be taxed by relying on the Madras HC decision in case of CIT *v*. Kay Arr Enterprises [2008] 299 ITR 348 (Madras).

Held

The Tribunal observed that it would not be proper to hold that this was a case of family settlement, as the retirement of the taxpayers did not stop the partnership business.

Therefore, the decision in the case of Kay Arr Enterprises (*supra*) may not have direct application to the case.

The amount received over and above the balance lying in the capital accounts was capital in nature. When an amount received was capital in nature, courts have consistently held that amount could not be brought to tax. The amount received by the taxpayer was his/ her share in the value of the business. The share in the value of the business (which may also include goodwill) was a capital receipt and, in the light of judicial pronouncements, such receipts were not liable to capital gains taxation. The retirement deed executed did not restrain the taxpayer from carrying on business activities and, therefore, section 28(va) of the Act was not applicable. There was no element of profit in the additional payments as the profit till the date of retirement had been worked out and the respective shares had been credited to the capital accounts of the partners. Even if, for the sake of argument, there was an element of profit, such profit would not be taxable in the hands of the partners by virtue of section 10(2A) of the Act since the profit would have been taxed at the firm level already.

Thus, the Tribunal held that the additional payments made to retiring partners were neither in the nature of profit or income under section 28(va) of the Act nor were they taxable capital receipts.

Editor's note: *This case highlights the treatment of additional payments received by partners at the time of retirement. In this regard, it is useful to also refer to the case of N.Prasad [TS-40-ITAT-2014 (Hyderabad - Tribunal)] in which it was held that such additional payments were not payments related to relinquishing or extinguishing the rights of the partners over any assets of the firm, nor were they payments towards goodwill.*

Circular/ Notification

Regional director required to invite comments of Income-tax department and other sectoral regulators in cases involving amalgamation/ arrangement

Circular No. 1/2014 dated 15 January 2014

The Ministry of Corporate Affairs (MCA), in its general circular no. 1/2014, dated 15 January, 2014, has introduced a mechanism wherein the Regional Director (RD) is required to invite specific comments/ inputs from the Income-tax (IT) Department and other sectoral regulators within 15 days of receipt of notice under section 394A of the Companies Act, 1956, in cases involving amalgamation or arrangement.

In the light of a recent case where the RD failed to project the objections of the IT Department in a case involving amalgamation/ reconstruction, the MCA has decided to widen the scope of the RD's representation under section 394A of the Companies Act, 1956 with effect from 15 January 2014.

The RD will now be required to invite the specific comments/ views of the IT Department in cases involving arrangement / compromise (under section 391 of the Companies Act, 1956) or reconstruction/ amalgamation (under section 394 of the Companies Act, 1956) within 15 days of receipt of notice under section 394A Companies Act, 1956, before filing his report to the HC. In addition, the RD must also, if it appears necessary, obtain and examine feedback from other sectoral regulators in particular cases.

This circular has emphasised that it is not for the RD to decide the correctness or otherwise of the objections / views of the IT Department or other sectoral regulators. However, if the RD has any compelling reason to doubt the correctness of such views, a reference must be made to the MCA for taking up the matter before filing the representation under section 394A of the Companies Act, 1956.

If no response from the IT Department is forthcoming, the RD can presume that the IT Department has no observation/objection to the action proposed under sections 391 or 394 of the Companies Act, 1956.

Editor's note: *This Circular is in line with the provisions under Companies Act, 2013 (yet to be announced). In order to comply with this Circular, RD can also seek to obtain additional time from the HC, in order to provide his representations.*

Clarification with regard to applicability of section 185 of the Companies Act, 2013, to loans made, guarantee given or security provided to a subsidiary company

Circular no. 3/2014 dated 14 February 2014

The MCA, in its general circular no. 3/2014, dated 14 February, 2014, has clarified, in relation to the applicability of section 185 of the Companies Act, 2013, vis-à-vis section 372A of the Companies Act, 1956, that any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company (with certain exemptions as provided under section 372A(8)(d) of the Companies Act, 1956) shall be applicable until section 186 of the Companies Act, 2013, is notified.

The MCA received several representations as to the applicability of section 185 of the Companies Act, 2013, with reference to loans made, guarantees given or security provided under section 372A of the Companies Act, 1956.

Section 185 of the

Companies Act, 2013, states that a company cannot give any guarantee or provide any security in connection with a loan taken by any of its directors or any other person in whom a director is interested. Since there are no exceptions, these provisions will also apply to a guarantee given or security provided by a holding company to its wholly-owned subsidiary. Section 372A(8)(d) specifically exempts any loans made, any guarantee given or security provided, and any investment made by a holding company to, or in, its wholly-owned subsidiary.

This issue has been examined by the MCA and it has now been announced that in order to maintain harmony with regard to the applicability of section 372A(8)(d) of the Companies Act, 1956, until that Act is repealed and section 186 of the Companies Act, 2013, is announced, a holding company may give any guarantee or provide any security to a bank or a financial institution in respect of loans made by that bank or financial institution to its wholly-owned subsidiary company, where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

Editor's note: *It is worth mentioning that the relief is not given with respect to a loan given by a holding company to its wholly-owned subsidiaries, but the Circular issued as a clarification, is limited only with respect to any guarantee given or security provided by a holding company to a bank or a financial institution in respect of loans made by such bank or financial institution to its wholly owned subsidiary company.*

Disallowance of expenses under section 14A of the Act in cases where corresponding exempt income has not been earned during the FY

CBDT Circular No. 5/2014 dated 11 February 2014

Clarifications

1. The CBDT has clarified that the legislative intent behind introduction of section 14A of the Act was to allow only that expenditure which relates to the earning of taxable income and it therefore follows that expenses relating to earning of exempt income have to be considered for disallowance, irrespective of whether any such income has been earned during the financial year or not.
2. The above position was clarified by the use of the term '**includible**' in the headings to section 14A of the Act - "**Expenditure incurred in relation to income not includible in total income**" and also in the heading to Rule 8D of the Income-tax Rules, 1962 (the Rules), which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income in order for disallowance to be triggered.
3. Furthermore, section 14A of the Act does not use the word "income of the year" but "**income under the Act**". This also indicates that, in order to invoke disallowance under section 14A, it is not material that the taxpayer should have earned such exempt income during the financial year under consideration.
4. The above position is further substantiated by the language "the average of the value of investment, **income from which does not or shall not form part of the total income**" as used in Rule 8D (2)(ii) and 8D (2)(iii) of the Rules.

Editor's Note: *By issuing this Circular, the CBDT has tried to address the controversy around this matter, and to clarify its view that to invoke disallowance under section 14A of the Act it is not necessary to have exempt income during that particular financial year. Considering the fact that CBDT circulars are not binding on tax payers and the judiciary, it will be interesting to see how the judiciary positions itself on this matter after this circular has been released.*

Pricing appropriately
Transfer Pricing

Prelude

The Central Board of Direct Taxes (CBDT) signed its first batch of five unilateral Advance Pricing Agreements (APAs), on 31 March 2014. These five APAs were signed by the CBDT within one year of the applications having been made. Since the Indian APA program is covered under the confidentiality provisions under the Act, the CBDT may only disclose general information about the program. However, as a result of a statement published by the Indian tax department in the media, the five agreements cover a range of international transactions, including interest payments, corporate guarantees, non-binding investment advisory services and contract manufacturing. The agreements are also across different sectors, such as pharmaceutical, telecom, exploration and financial services. The APAs provide complete certainty to the taxpayers for five years with regard to their international transactions. The professional and open approach taken by the APA authorities, with the guidance of the Finance Ministry, the CBDT and the competent authority, has been an enabler of this early success of India's APA program. PwC acted as lead advisors in two out of the five APAs signed under the program.

The first cycle of APA filings involved about 146 applications. The recently concluded second year has had a further enthusiastic response and has resulted in a record number of applications, which seems to have exceeded the expectation levels of the Indian APA authorities and of the taxpayers.

In addition to events on the APA front, during recent months different Tribunals have decided cases involving transfer pricing issues. In this section, we summarise these cases.

Delhi Tribunal - Corporate guarantee is not an international transaction

Bharti Airtel Ltd. *v.* ACIT [2014] 43 taxmann.com 150 (Delhi-Tribunal)

The taxpayer issued a corporate guarantee to a bank on behalf of its Associated Enterprises (AEs), for which it did not incur any costs. In its Transfer Pricing Study, the taxpayer determined an arm's length commission rate for issuing the guarantee, which the Transfer Pricing Officer (TPO) rejected. The TPO instead re-determined the arm's length commission rate and proposed an adjustment in this regard. The TPO's decision was upheld by the Dispute Resolution Panel (DRP). The taxpayer appealed to the Tribunal.

On appeal, the Tribunal held as follows:

- In order to attract the ALP adjustment, a transaction has to be an 'international transaction' as defined under the transfer pricing regulations of the Act.
- When the taxpayer extended assistance to an AE, which did not cost it anything, and for which the taxpayer could not have realised money by giving it to someone else during the course of its normal business, such an assistance or accommodation did not have any bearing on its profits, income, losses or assets, and, therefore, was outside the ambit of the definition of the term 'international transaction' under section 92B(1).
- The onus was on the Revenue to demonstrate that the transaction was of such a nature as to have a "bearing on the taxpayer's profits, income, losses or assets".

Editors Note: For *corporate guarantees issued to overseas AEs, it is advisable for taxpayers with similar transactions to agree the terms by reference to commercial and transfer pricing principles. In this regard, the taxpayer and AEs should follow the international best practice of considering the following factors: shareholder functions of the guarantor, if any; the creditworthiness of the borrower; the implicit/ explicit support that will be provided. An economic analysis should also be carried out, such as an interest-saving approach. It is prudent to carry out such a transactional analysis because the verdict of the Tribunal in this case was decided based on legal principles which may possibly be overturned by either clarifications/ amendments to the law (as has happened in the past) and/ or by intervention at higher level judicial forums.*

Hyderabad Tribunal – Recognises difficulty in providing 'concrete' evidence in respect of services provided against management fees

TNS India Pvt. Ltd. *v.* ACIT [TS-21-ITAT-2014(Hyderabad-Tribunal)-TP]

The taxpayer was engaged in conducting quantitative

and qualitative market research. It had entered into several international transactions with its AEs, one of which was the disputed transaction related to payment of management fees. The other international transactions were accepted to be at arm's length, after being aggregated and benchmarked using the Transaction Net Margin Method (TNMM). The TPO challenged the management fee transaction and determined its ALP to be nil. The taxpayer had submitted documentation as documentary evidence to counter the TPO's challenge. This included a detailed description of the services received from the AEs; inter-company service agreements; the AE's financial statements and tax returns; confirmation that such payments had been made by other group companies too (average management fee as a percentage of sales paid by other group companies); basis of allocation of costs by the global headquarters and regional headquarters; and so on. Despite this evidence, the TPO held the ALP of the management fee transaction to be nil as the taxpayer could not substantiate the services in question. The TPO's decision was upheld by the CIT(A). The taxpayer appealed to the Tribunal.

On appeal, the Tribunal held as follows:

- Providing concrete evidence with reference to the services provided in the nature of specific activities in day-to-day business was difficult as the services were not tangible in nature. However, the nature of the services was evident from the way the business was conducted by the taxpayer.
- Unless the TPO was able to actually observe the role of the AEs in the taxpayer's business, it would be difficult to obtain a record the sort of advice given in day-to-day operations. Accordingly, the TPO's contention that services were not rendered was not appropriate.
- The taxpayer had presented a lot of evidence in support of its claim. The detailed write-up of services provided and benefits received, as provided by the taxpayer, had neither been contradicted by the revenue authorities, nor had they specified what other evidence would have satisfied them.
- The role of a TPO was to determine the ALP of a transaction. By rejecting outright the entire payment of the management fee, the TPO went beyond his jurisdiction. In its determination of the ALP, the TPO could not question the business decision regarding the payment and could not determine that no services were rendered as ruled by the Delhi High Court ruling in the case of EKL Appliances Ltd (ITA No. 1068 & 1070/2011).

The Tribunal in principle allowed the claim of management fees. However, the matter relating to the quantification of the claim was returned to the TPO as the TPO had not examined whether the payment of management fees was in accordance with the transfer pricing methodology laid out in the inter-company service agreement.

Mumbai Tribunal, Special Bench – Refrains from bifurcating knowledge process outsourcing and business process outsourcing, yet allows dissection of Information technology enabled services based on functional mapping

The taxpayer was engaged in providing Information Technology (IT) and IT enabled services (ITeS) to its AEs. The determination of the ALP of the international transaction was in dispute. The taxpayer had selected the TNMM as the most appropriate method for benchmarking the transaction. The TPO, however, rejected the taxpayer's TP Study and proceeded to determine his own ALP. The TPO compared the taxpayer with knowledge process outsourcing (KPO) companies, when in fact the taxpayer was a low-end service provider providing business process outsourcing (BPO) services. The TPO also included high profit margin companies in the set of comparables. The DRP eventually finalised a mixed set of ten comparables (five comparable companies as selected by the taxpayer in its TP Study and five comparable companies as selected by the TPO) to benchmark both the IT and ITeS provided by the taxpayer. The taxpayer appealed to the Special Branch (SB) of the Tribunal. In line with the objections, two questions were framed for the SB to address.

Question 1: Whether for the purpose of determining the ALP of the taxpayer's international transaction involved in providing back office support services to its AEs, companies performing KPO functions should be considered as comparable.

The SB's ruling was as follows:

- Even though there appeared to be a difference between BPO and KPO services, the difference was very slight. The range of services rendered by the ITeS sector was so wide that a classification of these services as low-end or high-end was not possible.
- In the process of its evolution, a BPO company trying to upgrade to a KPO is likely to render both BPO as well as KPO services to customers and such an entity could not be considered strictly as either a BPO or KPO company as it would

provide a mix of services. It is difficult to separate BPO and KPO services. Also, it may not be possible to create a third category somewhere in between BPO and KPO.

- Simple voice and data services were the low-end services of the BPO sector, whereas anything beyond that was referred to as KPO services.
- On the other hand, the definition of ITeS in the Safe Harbour Rules includes data search integration and analysis as well as clinical database management services, excluding clinical trials. These services, which were beyond simple voice and data services, were not included in the definition of KPO services in the Safe Harbour Rules.

Question 2: Whether companies earning an abnormally high profit margin should be considered as comparable companies for the purpose of determining the ALP of the international transaction

The SB's ruling was as follows:

- Potential comparable companies which satisfied the comparability conditions, could not be merely excluded on the ground that their profit was abnormally high. Abnormal margins should trigger further investigations to ascertain whether the earning of a high profit reflected a normal business condition or if it was the result of certain abnormal conditions prevailing in the relevant year.
- The profit margin earned by such an entity in the immediately preceding year/s may also be taken into consideration to find out whether the high profit margin represented the normal business trend.
- If the high profit margin did not reflect normal business conditions, the entity making the high profit margin should not be included in the list of comparables.

Editor's Note: *On the face of it, it may appear that by not distinguishing a KPO from a BPO company, the SB has done the ITeS community a disservice. However, if one were to closely analyse practical situations, appreciating the width and depth of ITeS, one would realise that by refraining from categorising specific services into KPO and BPO, the SB has in fact granted much-needed flexibility required when benchmarking ITeS activities. The SB has left enough room to allow an analysis of comparable companies, based on the facts of the case.*

Pune Tribunal – TPO not justified in recalculating royalty based on his own interpretation of term 'Net sales'

Akzo Nobel Chemicals (India) Ltd. *v.* DCIT [TS-45-ITAT-2014 (Pune-Tribunal)-TP]

The taxpayer was primarily engaged in the business of manufacturing and selling specialty chemicals which acted as polymerization initiators. For the purpose of benchmarking using the TNNM, the international transactions between the taxpayer and its AE were separated into the manufacturing segment (which comprised import of raw materials, export of finished goods, import of bulk raw materials for trading and repacking, and payment of royalty) and marketing and sales support segment. The taxpayer had entered into a technical collaboration agreement with its AE and paid royalty on net sales, both domestic and export. These rates were approved by the government authorities for a period of seven years. The royalty amounts paid to the AE were computed on the net sales in accordance with the provisions of the Foreign Exchange Control Manual of the Reserve Bank of India (RBI).

During the assessment proceedings, the TPO, rejecting the method adopted by the taxpayer in calculating the net sales, concluded that the cost of certain raw materials, which were constituent chemicals and equivalent expression of bought out chemicals, should be deducted from the sales value in order to arrive at the net sales. In addition, the TPO considered the royalty rate agreed by another group company with the AE as a comparable rate for determining the ALP for the royalty payment. This decision was upheld by the DRP. The taxpayer appealed to the Tribunal.

On appeal, the Tribunal held as follows:

- The TPO was not justified in recalculating the royalty based on his own interpretation of the term net sales as the net sales formula considered by the taxpayer was not found to be inconsistent with, or to violate, the relevant government approval or RBI guidelines.
- The raw materials in the taxpayer's case, which were classified as constituent materials by the TPO, underwent processing and were irretrievable once the final product was manufactured, and hence these raw materials could not be equated with bought-out components.

With respect to the TPO's application of the Comparable Uncontrolled Price (CUP) method to benchmark the royalty transaction, the comparable transaction chosen by the TPO was a controlled transaction and could not be considered for comparability analysis under the CUP method. In addition, on account of differences in the agreement period and the list of products covered in the two agreements, the royalty rates agreed by another group company with the AE could not be considered.

Taxing of goods and services
Indirect Taxes

Case law

VAT/Sales Tax/Entry Tax/ Professional Tax

Permission to use a trade mark on a non-exclusive basis is not liable to VAT as it is not deemed to be a sale

Commissioner of Commercial Tax *v.* Seagram India Pvt. Ltd. (2013-NTN-Vol 53-283)

The Allahabad HC held that no VAT could be levied on grant of permission to use a trade mark on a non-exclusive basis. A transaction relating to permitting use of a trade mark had to be treated as a mere license of a trade mark and would not deemed to be a sale involving a transfer of a right to use the trade mark. The HC relied on the landmark decision of the SC in the matter of Bharat Sanchar Nigam Ltd *v.* UOI (2006-3-SCC-1).

Writ jurisdiction should not be exercised against show-cause notice

Hindustan Coca-Cola Beverages Private Limited *v.* State of UP (2014-67-VST-435)

The Allahabad HC held that a writ jurisdiction should not be exercised against a show-cause notice as the person to whom the show-cause notice was issued had the opportunity to address his grievance by submitting his reply to the authority concerned.

CENVAT

Compensation for delay in supply of goods can be reduced while computing transaction value

CCE *v.* Victory Electricals Ltd (2013 (298) ELT 534)

A Larger Bench of the Chennai Tribunal held that the value payable after factoring in any liquidated damages contractually stipulated for delayed supply would be the transaction value for a levy of excise duty.

Placing warranty stickers and chassis number on pre-packed goods does not amount to manufacture

Beltek (India) Ltd *v.* CCE (2014-TIOL-184-CESTAT-DEL)

The Delhi Tribunal held that when goods were already packed and bore MRP stickers at the stage of being imported, the activity of merely placing warranty stickers and pasting chassis numbers onto them would not amount to 'manufacture' under section 2(f)(iii).

Service Tax

Transfer of trade name and formulae by a brand owner for further manufacturing is taxable under 'intellectual property right service'

RM Dhariwal *v.* CCE (2013-TIOL-1897-CESTAT-MUM)

The Mumbai Tribunal held that transfer of a trade name and formulae by a brand owner for further manufacturing was classifiable under 'intellectual property right service' and not under 'scientific or technical consultancy service'.

E-commerce transaction services provided through a website which facilitated sale and purchase of goods are held as taxable under "Business Auxiliary Service"

CCE *v.* Ebay India Pvt. Ltd. (2014-TIOL-243-CESTAT-MUM)

The Mumbai Tribunal held that e-commerce transaction services provided through a website which facilitated the sale and purchase of goods over the internet would be taxable under "business auxiliary service" (BAS) and not under 'online data access and/or retrieval services'.

The Tribunal further held that the listing fee charged towards 'banner advertising' on an e-commerce website could not be classified under BAS and had to be classified as 'sale of space or time for advertisement services' and would be taxable only with effect from 1 May 2006.

Customs/ Foreign Trade Policy (FTP)

Section 27 does not apply to refund of Extra Duty Deposit

CC *v.* Madras Fertilizers Ltd (2014 (299) ELT 465)

The Chennai Tribunal held that section 27 of the Customs Act, 1962, relating to refunds, did not apply to a refund of Extra Duty Deposit (EDD) collected during a provisional assessment as EDD was more in the form of security and not in the nature of duty.

Benefit of notification cannot be denied on technical grounds

CC *v.* Moonling Exim Pvt. Ltd. (2014 (300) ELT 91)

The Delhi Tribunal held that a benefit of notification could not be denied on the ground of non-production of an end-user certificate within a specified time where the

notification provided for further extension of time, as it was well-settled in law that a benefit could not be denied on technical grounds.

Directorate General of Foreign Trade has no power to legislate as this power lies with the Central Government and cannot be delegated to the DGFT

Alstom India Ltd *v.* UOI (2014-TIOL-223-HC-AHM-EXIM)

The Gujarat HC held that the Directorate General of Foreign Trade (DGFT) had no power to legislate, as the power to frame Duty Drawback Rules could be exercised by the Central Government only and could not be delegated to the DGFT.

EDD to be reduced from 5% to 1% in cases where requisite information has been submitted

Cargotec India Pvt. Ltd. *v.* UOI (2013-TIOL-1102-HC-MUM)

The Bombay HC held that EDD had to be reduced from 5% to 1% in cases where requisite information had been submitted by the importer, but the application was pending action by the customs authorities.

Notification/ Circular

VAT/Sales Tax/Entry Tax/ Professional Tax

Notices, summons and orders to be issued electronically under Delhi VAT

Order No. 3(366)/Policy/ VAT/2013 /1235-1245 dated 17 January 2014

With effect from 17 January 2014, notices, summons and orders shall be issued through electronic means, which includes pasting on the web-page of the dealer, SMS alerts and emails at the registered email ID of the dealer. The issue of notices, summons and orders through an electronic medium shall be treated as on par with the service of documents through registered post.

Customs / Foreign Trade Policy (FTP)

Import of human embryos exempt from levy of Basic Customs Duty

Notification No. 58 (RE-2013)/2009-14 dated 18 December 2013

The Central Government has announced an exemption from a levy of Basic Customs Duty (BCD) for the import of human embryos classified under Customs Tariff Heading (CTH) 0511.99.99, subject to an undertaking being provided to the customs authorities that the embryo shall not be used for commercial purposes.

Special Additional Duty of Customs is payable on stock transfer from Special Economic Zone /Free Trade and Warehousing Zone unit to DTA

Circular No. 44/2013-Customs dated 30 December 2013

The Central Government has clarified that Special Additional Duty of Customs (SAD) is payable on clearances from Special Economic Zone (SEZ)/Free Trade and Warehousing Zone (FTWZ) units to the Domestic Tariff Area (DTA) that are in the nature of stock transfer, as no sales tax/ VAT can be levied on such a transaction. Previously, the Unit Approval Committee of Noida SEZ, in its meeting and minutes of 1 April 2013 had given its view that SAD is exempt on stock transfer from a SEZ/FTWZ, subject to fulfilment of conditions.

Following the rulebook

Regulatory Developments

FEMA

Foreign Direct Investment (FDI)

Foreign Investment in Government dated Securities

A.P. (DIR Series) Circular No. 99 dated 29 January 2014

The Reserve Bank of India (RBI) has enhanced the foreign investment limit in Government dated securities for long term investors (Sovereign Wealth Funds, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks) registered with SEBI from USD 5 billion to USD 10 billion.

The overall limit of USD 30 billion for Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors1 remains unchanged.

Foreign Investment in Corporate Debt

A.P. (DIR Series) Circular No. 104 dated 14 February 2014

The RBI has reduced the foreign investment limit in Commercial Paper within Corporate debt limit for SEBI registered FIIs, QFIs and long term investors (Sovereign Wealth Funds, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks) to USD 2 billion from USD 3.5 billion.

The overall limit of USD 51 billion in Corporate Debt for FIIs, QFIs and long term investors (Sovereign Wealth Funds, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks) remains unchanged.

Import and Export of Goods and Services

Third party payments for export/import transactions

A.P. (DIR Series) Circular No. 100 dated 4 February 2014

The RBI in its circular (A.P. (DIR Series) Circular No.70 dated 8 November 2013) had permitted Indian entities to make payments towards import of goods to a third party and receive payment towards export of goods and software from a third party subject to certain conditions which included having a firm's irrevocable order backed by a tripartite agreement.

The RBI has now done away with the requirement of a firm's irrevocable order backed by a tripartite agreement in cases where documentary evidence for circumstances leading to third party payments/name of the third party mentioned in the irrevocable order/ invoice have been produced to the Authorised Dealer (AD) banks.

In addition to above liberalisation, the RBI has done away with the present cap of USD 10000 million up to which payment to a third party could be made for import of goods.

Miscellaneous

Facilities for Persons Resident outside India

A.P. (DIR Series) Circular No. 96 dated 20 January 2014

The RBI has clarified that FIIs and other foreign investors can remit funds through any bank of their choice for any transaction permitted under FEMA, 1999 which can thereafter be transferred to the AD Category – 1 custodian bank through the banking channel.

Furthermore, it is clarified that KYC in respect of the remittance will be a joint responsibility of the bank that has received the remittance as well as the bank that ultimately receives the proceeds of the remittance. In addition, the remittance receiving bank is required to issue FIRC to the bank receiving the proceeds to establish the fact the funds had been remitted in foreign currency.

RBI Reports – Key changes

Reporting issue of shares - Form FC-GPR

A.P. (DIR Series) Circular No.102 dated 11 February 2014

The revised form now captures the details of FDI as regards Brownfield / Greenfield Investment, the date of incorporation of Investee Company, etc.

Monthly report regarding External Commercial Borrowing (ECB) - Form ECB-2

A.P. (DIR Series) Circular No.105 dated 17 February 2014

The revised form now captures details of financial hedge contracted by Companies and details of foreign exchange earnings and expenditure.

Financial Services

Capital and Provisioning Requirements for Exposures to Entities with Unhedged Foreign Currency Exposure

RBI/2013-14/448DBOD. No.BP.BC. 85

/21.06.200/2013-14 dated 15 January 2014

The Reserve Bank of India (RBI) has decided to introduce incremental provisioning and capital requirements for bank exposures to entities with unhedged foreign currency exposure (UFCE). In order to calculate the incremental provisioning and capital requirements, the following calculation methodology is to be followed:

i) Ascertain the amount of UFCE
ii) Estimate the extent of likely loss
iii) Estimate the riskiness of unhedged position and provide appropriately

The above calculation methodology is specified in detail in the guidelines. This framework will be implemented from 1 April 2014.

Lending against gold jewellery
RBI/2013-14/453 DBOD. BP.BC.No.86 /21.01.023 /2013-14 dated 20 January 2014

It has been decided to prescribe a Loan to Value (LTV) Ratio of not exceeding 75% for banks' lending against gold jewellery (including bullet repayment loans against pledge of gold jewellery). As a result, henceforth loans sanctioned by banks should not exceed 75% of the value of gold ornaments and jewellery. In order to standardize valuation and make it more transparent for borrowers, it has been decided that gold jewellery accepted as security/ collateral will have to be valued at the average of the closing price of 22 carat gold for the preceding 30 days as quoted by the India Bullion and Jewellers Association Ltd. If the purity of the gold is less than 22 carats, the bank should translate the collateral into 22 carat and value the collateral with respect to its exact weight.

Review of Guidelines on Restructuring of Advances by Non-Bank Financial Companies (NBFCs)
RBI/2013-14/459 DNBS.CO. PD. No. 367/03.10.01/2013-14 dated 23 January 2014

RBI has decided to harmonise the guidelines on restructuring of advances for NBFC with that of banks. The major provisions of the directions include a relaxation so that mere extension of Date of Commencement of Commercial Operations (DCCO) up to a specified period will not tantamount to restructuring for infra, non-infra and commercial real estate (CRE) projects. Special asset classification benefit will be made available to Corporate Debt Restructuring (CDR) and consortium cases including a small and medium enterprise (SME) debt restructuring mechanism, apart from infrastructure and non-infrastructure project loans subject to certain conditions. The special asset classification benefit will, however, be withdrawn with effect from 1 April 2015 (with the exception of provisions related to changes in DCCO in respect of infrastructure as well as non-infrastructure project loans).

Liquidity Adjustment Facility-Repo and Reverse Repo
RBI/2013-2014/470 FMD.MOAG. No. 96 /01.01.001/2013-14 dated 28 January 2014

In accordance with the third quarter review of the Monetary Policy, it has been decided to increase the Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points, from 7.75% to 8.00%, with immediate effect. Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF will be automatically adjusted to 7.00%, with immediate effect and the marginal standing facility (MSF) rate and the Bank Rate adjusted from 8.75% to 9.00%. The cash reserve ratio (CRR) for scheduled banks will remain unchanged at 4.00 % of net demand and time liability (NDTL).

Interest Rates on FCNR (B) Deposits
RBI/2013-14/477 DBOD.No.Dir. BC.92/13.03.00/2013-14 dated 31 January 2014

The RBI has decided that the interest rate ceiling on FCNR (B) deposits prescribed in the circular dated 14 August 2013, referred to above, will continue till 28 February 2014 and will revert to the ceiling prior to 14 August 2013, as follows:

Maturity Period	Existing	With effect from 1 March 2014
1 year to less than 3 years	LIBOR/ Swap plus 200 basis points	No change
3 - 5 years	LIBOR/ Swap plus 400 basis points	LIBOR/ Swap plus 300 basis points

Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits
RBI/2013-14/476 DBOD.No.Dir. BC.90/13.03.00/2013-14 dated 31 January 2014

With effect from 1 March 2014, the interest rate ceiling on NRE deposits has reverted to the position prior to 14 August 2013, i.e. interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits.

Section 42(1) of the Reserve Bank of India Act, 1934 and section 24 of the Banking Regulation Act, 1949 - FCNR(B)/ NRE deposits - Exemption from Maintenance of CRR/ SLR and Exclusion from ANBC for Priority Sector Lending
RBI/2013-14/478 Ref: DBOD.No.Ret.BC. 93 /12.01.001/2013-14 dated 31 January 2014

It was decided that the exemption granted on incremental FCNR (B)/NRE deposits from maintenance of CRR/SLR would be

withdrawn with effect from the reporting fortnight beginning 8 March 2014, i.e., only the eligible amount of incremental FCNR (B) and NRE deposits of maturities of three years and above from the base date of 26 July 2013, outstanding as on 7 March 2014, would qualify for CRR/SLR exemption till their maturities/ pre-mature withdrawal.

Furthermore, advances extended in India against the above-mentioned incremental FCNR (B)/ NRE deposits, qualifying for exemption from CRR/ SLR requirements, will be eligible for exclusion from Adjusted Net Bank Credit, till their repayment, for computation of priority sector lending targets.

Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) – Directions – Modifications in "Pricing of Credit"

RBI/2013-14/482 DNBS (PD) C C.No.369/03.10.038/2013-14 dated 7 February 2014

It has been decided that the interest rates charged by an NBFC-MFI to its borrowers will be the lower of the following:

i. The cost of funds plus the margin indicated in the company circular DNBS.(PD)CC.No.300/03.10.38/2012-13 dated 3 August 2012 read with circular DNBS(PD) CC. No.327/03.10.038/2012-13 dated 31 May 2013; or

ii. The average base rate of the five largest commercial banks by assets, multiplied by 2.75.

The average of the base rates of the five largest commercial banks shall be advised by the RBI on the last working day of the previous quarter, which shall determine interest rates for the ensuing quarter. The above instructions will come into effect from the quarter beginning 1 April 2014. The Bank will announce the applicable average base rate on 31 March 2014, and at the end of every quarter thereafter.

Utilisation of Floating Provisions/Counter Cyclical Provisioning Buffer

RBI/2013-14/485 DBOD. No.BP.95/21.04.048/ 2013-14 dated 7 February 2014

It has been decided, as a countercyclical measure, that banks may utilise up to 33% of countercyclical provisioning buffer/floating provisions held by them as on 31 March 2013, for making specific provisions for non-performing assets, in accordance with the policy approved by their Board of Directors. Utilisation of countercyclical provisioning buffer/ floating provisions under this measure may be over and above the utilisation of countercyclical provisioning buffer/ floating provisions for the purpose of making accelerated/ additional provisions as proposed in the RBI's Press Release dated 30 January 2014, on "Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy".

Guidelines on Management of Intra-Group Transactions and Exposures

RBI/2013-14/487 DBOD.No.BP. BC.96/21.06.102/2013-14 dated 11 February 2014

The RBI has decided to prescribe guidelines on Intra-Group Transactions and Exposures (ITEs) for banks, based on comments received on draft guidelines issued on 14 August 2012. The guidelines are exclusively meant for banks' transactions and exposures to the entities belonging to the bank's own group (group entities). The guidelines contain quantitative limits with respect to financial ITEs and prudential measures for non-financial ITEs, to ensure that banks engage in ITEs in a safe and sound manner, in order to contain concentration and contagion risks arising out of ITEs. These measures are aimed at ensuring that banks, at all times, maintain an arm's length relationship in dealings with their own group entities, meet minimum requirements with respect to group risk management and group-wide oversight, and adhere to prudential limits on intra-group exposures.

These guidelines will become effective from 1 October 2014. Banks should accordingly submit data on intra-group exposures to the RBI (Department of Banking Supervision, Central Office), from the quarter ending 31 December 2014. If a bank's current intra-group exposure is more than the limits stipulated in the guidelines, it should bring down the exposure to within the limits at the earliest possible time, and not later than 31 March 2016. Any exposure beyond permissible limits subsequent to 31 March 2016, would be deducted from the bank's Common Equity Tier 1 capital.

Central Repository of Information on Large Credits – Revision in Reporting

RBI/2013-14/492 DBS.No.OSMOS. 9862/33.01.018/2013-14 dated 13 February 2014

- Banks are advised to submit the off-site return on Large Credit for the quarter ended December 2013 within 10 working days from the date when the revised XBRL installer was deployed, i.e. at the latest by 26 February 2014.

- The OSMOS Division will be requesting all banks to furnish the PAN details of their borrowers who have fund-based and / or non-fund-based exposure of INR 50 million and above. Banks are therefore advised to be ready with the correct PAN details duly authenticated against

income-tax records. The new reporting threshold amount will be effective from the quarter ended June 2014 onwards.

- The revised XBRL installer will provide for reporting of the Special Mention Account (SMA) status of the borrower to the Central Repository of Information on Large Credits (CRILC).
- For the purpose of reporting the outstanding current account balance of their customers (debit or credit) of INR 10 million and above, banks should report information of all clients whose names appears in the PAN Master of the Return, irrespective of whether or not the clients have availed themselves of any exposure (fund based and or non-fund based) from the bank.

FIMMDA's Trade Reporting and Confirmation Platform for OTC Transactions in Corporate Bonds and Securitized Debt Instruments

RBI/2013-14/500 IDMD. PCD. 10/14.03.06/2013-14 dated 24 February 2014

It has been decided that all entities regulated by the RBI should report their secondary market OTC trades in Corporate Bonds and Securitized Debt Instruments within 15 minutes of a trade on any of the stock exchanges (NSE, BSE and MCX-SX). These trades may be cleared and settled through any of the clearing corporations (NSCCL, ICCL and MCX-SX CCL). This circular is effective from 1 April, 2014.

Security Incident Tracking Platform- Reporting thereon

RBI/2013-14/501 DIT CO No.1857/07.71.099/2013-14 dated 26 February 2014

The Institute for Development & Research in Banking Technology (IDRBT) has developed a Security Incident Tracking Platform which allows banks to report security incidents anonymously, thus keeping the information reported by the banks confidential. The platform will be hosted on the INFINET and access will be provided only to Chief Information Security Officers (CISOs) of respective banks. IDRBT is simultaneously making arrangements to gather global threat intelligence from various sources, in coordination with CERT-In. CISOs of banks are advised to make use of the platform developed by IDRBT by reporting all information security related incidents using the platform. This will not only enable building a repository of security incidents-related information for the banking industry but will also help in fine-tuning policies relating to information security from time to time.

Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum and Corrective Action Plan

RBI/2013-14/503 DBOD.BP.BC. No.97/21.04.132/2013-14 dated 26 February 2014

The RBI released a framework for revitalising distressed assets in the economy which was placed on its website on 30 January 2014. Detailed guidelines on the formation of a Joint Lenders' Forum (JLF) and adoption of a Corrective Action Plan (CAP) for operationalising the above framework are given in this circular. These guidelines will be applicable for lending under Consortium and Multiple Banking Arrangements (MBAs). The guidelines also mention the restructuring process, prudential norms on asset classification and accelerated provisioning.

Framework for Revitalising Distressed Assets in the Economy - Refinancing of project loans, sale of non-performing assets and other regulatory measures

RBI/2013-14/502 DBOD.BP.BC.No. 98/21.04.132/2013-14 dated 26 February 2014

RBI has released a framework which provides detailed guidelines on refinancing of project loans, sale of NPAs by banks to securitization company/ reconstruction companies/ other banks/other financial institutions, bank loans for financing promoters' contribution, use of counter-cyclical/floating provision and registration of transactions with CERSAI.

Banks can extend finance to 'specialised' entities (bodies corporate exclusively set up for the purpose of taking over and turning around troubled companies and promoted by individuals or/ and institutional promoters (including the Government) having professional expertise in turning around 'troubled companies' and that are eligible to make investments in the industry/segment to which the target asset belongs) established for acquisition of troubled companies subject to the general guidelines applicable to advances against shares/ debentures/bonds.

Call/ Notice Money Market Operations

RBI/2013-14/504 IDMD/PCD/No. 11/14.01.01/2013-14 dated 26 February 2014

It has been decided to dispense with the extant practice of banks/ primary dealers/ co-operative banks approaching the RBI for fixing of prudential limits for transactions in the call/ notice money market. Banks/ primary dealers/ co-operative banks may, with the approval of their Boards, arrive at the prudential limits for borrowing/ lending in the call/ notice money market, under the terms of RBI Master Circular. The limits so arrived at may be conveyed to the Clearing Corporation of India Ltd. (CCIL) for setting of limits in the NDS-CALL System, under advice to Financial Markets Department (FMD) of the RBI. This circular came into effect on 3 March 2014.

Recent Alerts

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Date	Name	Subject Line
28 February 2014	Akzo Nobel Chemicals (India) Ltd *v*. DCIT [TS-45-ITAT-2014(PUN)-TP]	TPO not justified in recalculating royalty based on his own interpretation of term, 'Net Sales'
26 February 2014	CIT *v*. Maruti Suzuki (India) Limited (W.P (Civil) No. 5086 / 2013) & CIT *v*. Bose Corporation India Private Limited (W.P (Civil) No. 5003 / 2013)	Tribunal has no power to grant stay beyond a period of 365 days; no prohibition on High Courts (in a writ jurisdiction) to issue directions and grant interim stay even beyond 365 days
18 February 2014	Interim Budget 2014	Interim Budget 2014
14 February 2014	Sasi Enterprises *v*. ACIT [TS-43-SC-2014]	Initiation of prosecution proceedings under section 276CC of the Act for failure to file a return of income upheld by the Supreme Court
13 February 2014	ITO *v*. J.M. Morgan Stanley Private Limited [TS-690-ITAT-2013(Mum)]	Long term capital loss on sale of shares of a group company partly to a related buyer and partly to an unconnected third party buyer allowed
11 February 2014	E-Funds ruling - A silver lining for contract service providers!	E-Funds ruling - A silver lining for contract service providers!
07 February 2014	TNS India Pvt. Ltd. *v*. ACIT [TS-21-ITAT-2014(HYD)-TP]	Tribunal recognises difficulty in providing 'concrete' evidence in respect of services provided against management fee
06 February 2014	The Cosmos Co-op Bank Ltd *v*. DCIT [TS-47-ITAT-2014(PUN)]	Consideration paid for acquiring 'licenses and client base' under a merger scheme is a 'business and commercial rights of similar nature', eligible for depreciation under section 32(1)(ii) of the Income-tax Act
03 February 2014	Shree Cement Ltd. *v*. Add. CIT [ITA No. 503/JP/2012, ITAT Jaipur]	Tribunal elucidates the concept of 'market value' for claiming tax holiday by captive power units
03 February 2014	M/s. Fibars Infratech Pvt. Ltd. *v*. ITO [ITA No. 477/Hyd/2013] AY 2007-08	Development Agreement – willingness to perform critical to invoke transfer
31 January 2014	Hallibutron Offshore Service Inc *v*. ACIT [ITA No. 41 of 2009, Uttarakhand HC]	Inclusion of statutory liability for the purpose of computing gross receipts under section 44BB - Reference for constitution of Larger Bench
30 January 2014	Article published in Bloomberg BNA	Indian chapter in the form of country response to the issue relating to "implicit support" in the context of intra-group financial transactions
29 January 2014	Canara Bank *v*. ACIT [TS-685-HC-2013(KAR)]	Loss on redemption of investment in units of Mutual Fund incurred on account of commercial expediency, deductible as expenditure under section 37(1) of the Act

Date	Name	Subject Line
27 January 2014	Motorola India Electronics Pvt. Ltd. [TS-683-HC-2013(KAR)]	Section 10A/10B of the Act deduction available on income incidental to carrying on business of the undertaking, post amendment by Finance Act 2001
20 January 2014	CIT *v*. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100 (Gujarat-HC)	Employees' contribution to EPF/ESIC beyond due dates specified in the relevant statutes disallowed even if deposited before the due date of filing the tax return
20 January 2014	Sun-N-Sand Hotels Pvt. Ltd. *v*. DCIT [TS-6-ITAT-2014(Mum)]	Consideration for transfer of sales tax incentive taxable as revenue receipt
17 January 2014	CBDT Circular No. 4-2008 dated 28-04-2008	No TDS on service tax on payments made/ due to resident payee if service tax component is indicated separately in the agreement/ contract
09 January 2014	Notification No. LAD-NRO/GN/2013-14/36/12 dated January 7, 2014	SEBI (Foreign Portfolio Investors) Regulations, 2014
06 January 2014	http://www.sebi.gov.in/cms/sebi_data/attachdocs/1387543144855.pdf	Consultation paper released by SEBI on infrastructure investment trusts

Glossary

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

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