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Editorial

I am delighted to bring to you the latest issue of India Spectrum.

With the promises made during elections and the strongest mandate in decades, the new Government unveiled its maiden budget on July 10, 2014. Given that the Government had been in office for just forty five days, the Finance Minister (FM), Mr. Arun Jaitley rightly pointed out that not everything could be addressed in one budget. Changes would require to be made over the next few years to achieve the economic aspirations.

The task for the FM was cut out – balancing the irrational exuberance in the days leading up to the Budget, against harsh economic realities prevailing at the ground level, and the reshaping of investment sentiment on the international front. The FM laid emphasis on fiscal consolidation, creation of infrastructure, and on increasing investments in manufacturing, agriculture and social sector. He expects gross domestic product growth to be in the range of 5.4-5.9% in 2014-15, leaving behind the sub-5% growth in last two years.

Acknowledging the situation, though the controversial retrospective amendment on overseas indirect transfers has not been reversed, to allay the fears of the investor community, he has promised not to ordinarily introduce retroactive amendments in future. So far as overseas indirect transfers are concerned, he has announced his intention to set up a high level committee to look into such past cases that come up before any action is initiated.

As a measure for reducing tax litigation, he has proposed to allow residents to approach the Advance Rulings Authority, roll back Advance Pricing Agreements to prior years, and enlarge the scope of the Settlement Commission. The FM strongly reaffirmed his commitment to the introduction of Goods and Services Tax (GST), but stopped short of announcing a timeline for its roll-out.

So much for announcements made in the Budget.

The Reserve Bank of India (RBI) has replaced the existing Discounted Cash Flow and Return on Equity based pricing guidelines for valuation of equity instruments with internationally accepted pricing methodology for valuation on arm's length basis and thereby accepted a strident demand from various quarters.

The Mumbai Bench of the Income-tax Appellate Tribunal (Tribunal), in the case of IATA BSP India has held that payment made for certain satellite link services are not in the nature of fees for technical services chargeable to tax in India. It has dealt with scope of applicability of the MFN clause in the Double Tax Avoidance Agreement (tax treaty). In another ruling in the case of Kerala Vision Limited, the Cochin Bench of the Tribunal held that payment for pay channel charges made prior to the retrospective amendment to section 9(1)(vi) of the Income-tax Act, 1961 (the Act) was taxable as 'royalty'. However, the taxpayer could not be held liable for failure to withhold tax from the same, as it was a liability that could not have been foreseen. See page nos. 7 and 8 for a detailed analysis of these rulings.

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

Shyamal Mukherjee
Leader, Tax and Regulatory Services

Analysing tax issues
Corporate tax

Union Budget 2014 - Highlights

Amidst high expectations, the FM of the newly sworn-in Government presented the Union Budget on July 10, 2014. There is no change proposed in the applicable tax rates for companies, firms, LLPs and societies. No change is proposed in surcharge and education cess either. Distributable income and dividends are now proposed to be grossed up for computing Dividend Distribution Tax (DDT). Concessional tax rate of 15% on dividends received by domestic companies from their overseas subsidiaries is extended indefinitely. The sunset date for tax holiday to the power sector under section 80-IA of the Act is proposed to be extended by 3 years up to March 31, 2017. Further, the FM proposed a constitution of a Central Board of Direct Taxes committee that would look into indirect transfer transactions in future, but there is silence with regard to retrospective operation of the indirect transfer provisions as also on the open issues relating to computations for prospective transactions. Also, a High Level Committee is proposed to be set-up to interact with trade and industry on a regular basis and ascertain areas where clarity in tax laws is required. Based on the recommendations of the Committee, the Central Board of Direct Taxes and the Central Board of Excise and Customs will issue appropriate clarifications wherever required on tax issues within 2 months.

Payments made to non-residents is proposed to be allowed as a deduction, if tax is deposited on or before the due date of filing return. Disallowance on account of non-deduction or non-payment of tax withheld on payments made to residents is proposed to be restricted to 30% of the amount of expenditure claimed. Expenditure on corporate social responsibility initiatives will not ordinarily be allowed as a deduction.

Besides, the FM proposed a few initiatives that will hopefully result in fewer disputes - more benches of the Authority for Advance Ruling (AAR), allowing resident taxpayers too to approach the AAR, and wider scope of the Settlement Commission.

Some other key policy announcements made by the FM in the Finance (No. 2) Budget 2014 include the introduction of uniform Know Your Customer (KYC) norms and of a single operating demat account for all financial assets, the deepening of the bond and derivative markets, and the expansion of the American Depository Receipt/ Global Depository Receipt ambit by allowing issuance of depository receipts on all permissible securities. Furthermore, to encourage foreign direct investment (FDI) in the insurance sector, it has been proposed that the composite cap for FDI in the insurance sector be increased from 26% to 49%, with full Indian management and control, under the Foreign Investor Promotion Board route. The RBI is to create a framework for licensing small banks and other differentiated banks. In real estate, project-linked conditions for FDI in construction development projects are to be liberalised.

Amongst the direct tax proposals, some key proposals are discussed below. Compulsory characterisation of income of Foreign Portfolio Investors (FPIs) from transactions in securities (including derivatives) as capital gains has put to rest the uncertainty on characterisation and should encourage fund managers to shift to India. The period of holding for unlisted securities and units of a mutual fund (other than units of an equity-oriented fund) is proposed to be increased from 12 months to 36 months. The long-term capital gains arising from transfer of these units will now be taxable at 20% (with indexation benefit) instead of 10% (without indexation). DDT will now be computed on a gross distributions basis including such additional tax, as against income distributed.

In order to promote funding for the infrastructure sector, Real Estate Investment Trusts (REITs) and a modified REITs structure, i.e. Infrastructure Investment Trusts (InvIT) has been introduced and pass through status has been accorded.

The Finance Minister remained silent on deferral of General Anti-Avoidance Rules. Also, there has been no change in provisions for retrospective taxation. However, as an apparent respite, it has been decided that a high level committee will be set up to look into and scrutinise all fresh cases arising out of retrospective indirect transfer amendment, before any action is initiated in such cases.

Case law

Fees for technical services

Payment made for BSP link services are not in the nature of fees for technical services; restricted scope of India-France tax treaty applied as per clause 7 of the Protocol

DDIT *v.* IATA BSP India [TS-367-ITAT-2014(Mumbai-Tribunal)]

Facts

The taxpayer was a branch office of IATA Canada established in India for undertaking certain commercial activities on no-profit basis, as permitted by the Reserve Bank of India. Pursuant to an agreement entered into by IATA Canada through its another administrative office in Switzerland, ADP-GSI, France, developed a system as per the specific needs of airlines and agents. This system was called BSP link wherein manual operations such as issue of debit/ credit notes, issue of refunds, billing statements and all information relating to tickets were carried out electronically for agents and airlines that participated in the BSP link. These BSP link services were provided, among others, to agents and airlines operating in India, for which invoices were initially raised by ADP-GSI on IATA Canada, who in turn raised the invoices on the taxpayer. The payments against these invoices were liable to be made by the taxpayer to Switzerland office of IATA Canada.

The taxpayer filed an application under section 195(2) of the Act before the tax officer (TO) seeking permission to remit the said amounts to IATA Canada without withholding tax, since IATA Canada was not rendering any service to it, but was only collecting the funds from various IATA offices, including the taxpayer, for making payments to ADP-GSI. According to the TO, the actual beneficiaries of BSP Link services were the airlines and agents in India. It was a case where the service provider, i.e. ADP-GSI was paid by these entities through the taxpayer and IATA Canada. Therefore, the TO held that these transactions involved in substance payments made by airlines and agents in India on account of BSP link services provided by ADP-GSI, France. Further, since the services were technical in nature, the amount paid was covered within the ambit of fees for technical services (FTS) under Article 13 of the India-France tax treaty.

The Commissioner of Income-tax (Appeals) [CIT(A)] held that the amount paid by the taxpayer to the Switzerland office of IATA Canada was not taxable in India as it was not in the nature of FTS as per the restricted scope of the term under Article 13 of the India-France tax treaty and Protocol thereto read with Article 12(4)(b) of India-USA tax treaty applied in the instant case (because of the operation of the Most Favoured Nation (MFN) clause) . Therefore, the taxpayer was not liable to withhold tax from the payment of the said amount.

Held

The Income-tax Appellate Tribunal (Tribunal) appreciated the taxpayer's reasoning and held that the restricted scope provided in India-USA and India-Portugal tax treaties was applicable even under the India-France tax treaty as per clause 7 of the Protocol. The reasoning provided by the taxpayer was as follows:

- Clause 7 of the Protocol formed an integral part of the India-France tax treaty, which provided that if, under any agreement or Protocol signed after November 1, 1989 between India and a third Organisation for Economic Co-operation and Development (OECD) member state, India would limit its taxation at source, *inter alia*, on FTS or a scope more restricted, then the scope as provided for in that agreement would also apply under the India-France tax treaty because of the MFN clause.
- India had entered into a convention with USA, an OECD member country, on September 12, 1989 wherein the scope of FTS was restricted to mean payments of any kind to any person in consideration for rendering of any technical or consultancy services, if such services made available technical knowledge, experience, skill, knowhow, or processes, or consisted of the development and transfer of a technical plan or technical design.
- India had also entered into a tax treaty with Portugal, another OECD member country, on September 11, 1998 wherein the concept of FTS was further restricted to mean the services which made available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design that enabled the person acquiring the services to apply the technology contained therein.
- The restricted scope provided in India-USA and India-Portugal tax treaties thus was applicable even under the India-France tax treaty as per clause 7 of the Protocol.
- Going by this restricted

scope, the Tribunal agreed with the CIT(A) that the BSP link services provided by ADP-GSI, France did not 'make available' to the airlines/ agents any technical knowledge, experience, skill, know-how, or process so as to enable them to apply the technology.

- The decisions of the Karnataka High Court in CIT *v.* De Beers India Minerals Private Limited [2012] 346 ITR 467 (Karnataka) and of the Kolkata Tribunal in DCIT *v.* ITC Limited [2002] 82 ITD 239 (Kolkata-Tribunal) explaining the concept of technology 'being made available' also fully supported the taxpayer's view.

Accordingly, the Tribunal upheld the CIT(A)'s order holding that the payment made for BSP link services rendered by ADP-GSI France was not in the nature of FTS chargeable to tax in India.

Withholding tax

Payment for pay channel charges made prior to retrospective amendment taxable as royalty, but it cannot be disallowed for non-withholding of tax

Kerala Vision Limited *v.* ACIT [TS-342-ITAT-2014(Cochin-Tribunal)]

Facts

The taxpayer was engaged in the business of distributing cable signals. It received satellite signals from various channel companies. During the assessment year (AY) 2009-10, the taxpayer made payment towards pay channel charges to various channel companies. The payments were made without withholding tax, relying on the High Court decision in the case of Skycell Communications Limited *v.* DCIT [2001] 251 ITR 53 (Madras). The TO was of the opinion that this decision did not apply to the facts of this case, and that the pay channel charges were covered within the definition of royalty, and hence tax should have been withheld under section 194J of the Act. Non-deduction of tax at source would attract disallowance under section 40(a)(ia) of the Act.

Held

For the purpose of section 194J of the Act, 'royalty' had the meaning provided in Explanation 2 to section 9(1)(vi) of the Act, where the expression, 'process' was included. The Finance Act, 2012 had inserted Explanation 6 below section 9(1)(vi) of the Act to define the word 'process' to include, and be deemed to have always included, transmission by satellite, cable, optic fiber of any other technology. Since the Explanation started with the words 'for removal of doubts', it was clarificatory in nature and would apply for the year under consideration. The taxpayer was engaged in the business of transmitting television channels or signals by cable by receiving signals through satellite. Such transmission (both receipt of signal and transmission of the same) was included in the definition of 'process' in Explanation 6 to section 9(1)(vi) of the Act. The transfer of all or any rights with regard to a 'process' would be covered within the term, 'royalty' as per section 9(1)(vi) of the Act. Therefore, the payment made by the taxpayer towards pay channel charges was held to be royalty under the Act.

In the present case, the taxpayer's view that the pay channel charges could not be considered as royalty was supported by the decision in Asia Satellite Telecommunication Company Limited *v.* DIT [2011] 332 ITR 340 (Delhi). In this case, it had been held that the transmission of television signals through satellite/ transponders would not be covered by the term, 'royalty' as defined under Explanation 2 to section 9(1) of the Act. Although Explanation 6 to section 9(1)(vi) of the Act was clarificatory, as the taxpayer's view was supported by the said decision, the taxpayer could not be held liable for failure to withhold tax from the pay channel charges. Accordingly, it was held that the pay channel charges could not be disallowed under section 40(a)(ia) of the Act.

Burden of proving Form 26AS mismatch is on the Revenue – withholding tax credit cannot be denied where taxpayer provided proof of withholding and of its deposit to the credit of the Central Government

LSG Sky Chef (India) Private Limited *v.* DCIT [TS-340-ITAT-2014(Mumbai-Tribunal)]

Facts

The taxpayer had claimed credit for tax withheld in AY 2009-10. The TO allowed short credit without assigning any reasons. On appeal, the CIT(A) issued directions to the TO to allow credit for the tax withheld in accordance with the law and as per applicable procedural restrictions.

Held

If withholding tax credit was disallowed on account of some procedural restrictions, the CIT(A)'s order could not be faulted. The credit had been allowed only to the extent it was reflected in taxpayer's account in Form No. 26AS.

Earlier, there was no proper procedure for verification by the Revenue, and a withholding tax certificate was by itself considered as a sufficient proof of the tax specified therein as having been withheld and deposited for and on behalf of the deductee. This stood replaced and a mechanism had since been set up. Each deductor was required to return (on quarterly/ annual basis) the details of the tax withheld by it under its permanent account number, deductee-wise, also specifying details of the tax deposited to the credit of the Central Government therein. The same had to be verified at the Department's end, and the deductees were allowed credit accordingly.

Form 26AS represented a part of a wholesome procedure designed by the Revenue for accounting of withholding tax, and the burden of proving why Form 26AS did not reflect the details of the entire tax withheld could not be placed on a taxpayer-deductee. By furnishing the withholding tax certificate(s) bearing complete details of the tax withheld, the taxpayer had discharged its primary onus for claiming withholding tax credit. The Revenue was entitled to conduct proper verification and satisfy itself with regard to the veracity of the taxpayer's claim, but it could not deny the taxpayer credit in respect of withholding tax without specifying any infirmity in its claim. Form 26AS was a statement generated at the Revenue's end, and the taxpayer could not be in any manner held responsible for any discrepancy therein or for non-matching of withholding tax reflected therein with the taxpayer's claim(s). The taxpayer could not be denied withholding tax credit on the ground that the deductor may have specified a wrong permanent account number. Thus, upholding the CIT(A)'s order, the Tribunal held that the Revenue was obliged to grant the taxpayer credit for the tax withheld where it was able to prove satisfactorily the factum of tax withheld and its deposit to the credit of the central government. The Tribunal directed the TO to allow the taxpayer credit for the shortfall, after verification.

No withholding tax on export discount/ bonus – nomenclature in agreement alone not sufficient to determine whether payment was subject to withholding tax

Hilton Forge *v.* JCIT [TS-353-ITAT-2014(Mumbai-Tribunal)]

Facts

The taxpayer was engaged in the business of steel forgings. For the AY 2005-06, the taxpayer had debited an amount as discount/ bonus on export payments to Damstahl GmBH (German party). When asked to provide reasons for failure to withhold tax on the payments made, the taxpayer submitted that the payment was made as per the agreement with the German party only when export sales were realised, and thus, the payments were not subjected to withholding tax under section 195 of the Act. The CIT(A) remanded the matter back to the TO, and on receiving the remand report, confirmed the disallowance providing a different reasoning, *viz.* that the payment represented prior period expenses.

Held

According to the agreement, the taxpayer was required to pay 2% to 5% of the order placed by the German party, subject to shipment and payment of the supply realised by the taxpayer for the years 2003 to 2006. The payment was made against export order placed by the German party, on realisation of export sales by the taxpayer, and thus was in the nature of trade/ cash discount on sale, though termed as bonus in the agreement. The nomenclature in the agreement alone was not sufficient to determine the nature of payment when the payment was directly related to the order placed and supply of the goods to the party. It was not for rendering of any service but directly related to realization of export sale proceeds. The CIT(A) had not provided the taxpayer an opportunity of being heard. Noting that the taxpayer had filed additional evidence in support of its claim, which required examination, the Tribunal remitted the matter back to the CIT(A) to reconsider and decide the matter.

Hire purchase payments were towards rent and were not finance charges, liable to withholding tax under section 194I and not under section 194A

ACIT *v.* R. Balarami Reddy & Co. [TS-314-ITAT-2014(Hyderabad-Tribunal)

Facts

(a) The taxpayer, a contractor executing work contracts, claimed expenditure towards hire charges under hire purchase agreements. The payments were made towards purchase of tippers, machinery and other equipment. The TO disallowed the expenditure under section 40(a)(ia) of the Act on the ground that the taxpayer had failed to withhold tax on hire charges under section 194A/194I of the Act. On appeal, the CIT(A) held that the hire charges paid were neither covered by sections 194A nor 194I of the Act. Accordingly section 40(a)(ia) of the Act was inapplicable.

(b) The taxpayer had entered into a joint venture (JV) with another company for executing contract works and also to satisfy the eligibility criteria of the Government of Maharashtra. An amount was released as an initial disbursement towards mobilization advance to the JV. The taxpayer also made another payment to the JV, which it claimed as expense on account of 'interest on mobilization advance'. The accounts of the taxpayer in the books of the JV clearly indicated that interest was paid by the taxpayer to the JV. The TO felt that the taxpayer should have withheld tax under section 194A, and since that was not done, he disallowed the interest on mobilization advance under section 40(a)(ia). The CIT(A) observed that the JV was solely formed for execution of contract works; and that taking of mobilization advance and payment of interest thereon formed an integral part of its business. Relying on the decision in Hindustan Coca Cola Beverages Private Limited *v.* CIT [2007] 293 ITR 226 (SC), the CIT(A) held that the taxpayer had committed no default, and that the TO had wrongly applied section 40(a)(ia) to the payment of interest on mobilization advance.

Held

(a) In CIT *v.* M G Brothers [ITA Nos. 43, 44, 45, 50 of 2007 and 761 of 2006], the owner of goods allowed its use to the hirer on some periodical payments (i.e. hire charges), with an option to hirer to either purchase goods or return goods at end of hire period. Such hire charges were appropriated by the owner towards price of goods. If hirer purchased goods, title in goods was transferred to him and if goods were returned, then payments made so far were to be treated as rentals. In this case, the High Court (HC) held that concept of hire charges was with regard to payments of rental, and not repayment of loan. In the light of this decision, the Tribunal held that there were no finance charges or interest payment involved in hire purchase transactions. The CIT(A) had rightly held that section 194A withholding tax provision for interest payments would not be applicable on hire charges payment. However, since the hire charges in the present case were in the nature of rental charges, section 194I applied. The Tribunal also referred to Explanation to section 194I, which defined 'rent' as payment under any lease, sub-lease agreement, or any other agreement or arrangement for use of machinery, land, equipment, etc. Therefore, the Tribunal held that the hire charges payment for the use of machinery/equipment was covered by Explanation to section 194I of the Act as rent. Hence, the payment by taxpayer towards hire charges based on hire purchase agreement was liable for tax withheld under section 194I of the Act.

(b) Payment of interest was the JV's income and the taxpayer was liable to withhold tax. Hence, section 40(a)(ia) disallowance should be attracted. However, the Finance Act, 2012 had added second proviso to section 40(a)(ia) w.e.f. April 1, 2013, which provided that no disallowance under section 40(a)(ia) shall be made if the payee had paid tax on such amount and furnished tax return to that effect. The Tribunal relied on the decision in Antony D Mundackal *v.* ACIT [ITA No. 38/Cochin/2013] which followed the decision of the Pune Tribunal in Gaurimal Mahajan [TS-64-ITAT-2014(Pune-Tribunal)]. In this latter case, the Tribunal held that the taxpayer had not withheld tax in view of the amended provisions of section 40(a)(ia), and that the second proviso to section 40(a)(ia) was clarificatory in nature and therefore it should be applied retrospectively. Accordingly, the Tribunal directed the TO to verify whether the JV had paid tax on interest income, and to decide the issue in accordance with the law.

Capital gains

In case of conversion of stock-in-trade to investment asset, period of holding to be reckoned from the date of conversion of asset

CS Holdings Private Limited *v.* ACIT [2014] 63 SOT 98 (Chennai-Tribunal)

Gains arising on reconversion of stock-in trade into investment had to be treated as capital gains and not business income; in order to determine the period of holding of the capital asset, only the period for which the asset was held as investment should be considered for the purpose of ascertaining whether the asset should be considered as short term or long term.

Facts

The taxpayer company initially purchased shares out of borrowed funds and held them as investments. Subsequently, in the following AY the taxpayer introduced the shares as stock-in-trade in its business, thereby treating the interest payment on borrowed funds as business expenditure. After a period of two years, the taxpayer reconverted the shares to investments by passing a board resolution to this effect and treated the gains arising on the transfer of those shares as long-term capital gains. The TO held that trading in shares was the main business activity of the taxpayer and it was nothing but an 'adventure in nature of trade'; thus, the profits should be taxable as business income. Furthermore, even if the shares were treated as investments, the taxpayer was not entitled to claim benefit of long-term capital gains.

Held

The Tribunal examined the provisions of section 2(47) of the Act which includes conversion of investments into stock-in-trade under the definition of transfer. Furthermore, section 45(2) of the Act provides that gains arising on transfer in case of conversion of an investment asset to stock-in-trade shall be chargeable to income tax in the year of sale of the relevant asset. However, there was no provision for a situation wherein stock-in-trade assets were converted to investments. It was further noted that at the time of their sale, the relevant assets were classified as capital assets and hence the gains arising on the transfer would be treated as capital gains. In order to determine the nature of the capital gains, the Tribunal relied on the case of Splendor Constructions Private Limited *v.* ITO [2009] 27 SOT 39 (Delhi), where the period for which the asset was held as stock-in-trade was not considered as a part of the holding period for ascertaining the nature of the asset. Therefore, it was held that the period for which the asset was held as stock-in-trade was to be excluded from the total period for which the shares were held by the taxpayer.

Editor's note

The Finance (No.2) Bill 2014 has amended the definition of the term 'capital asset' to include all income arising to FPIs from transaction in securities (including derivatives). Considering this, one would need to explore the applicability of the above principle in the case of FPIs that were characterising their income from sale of securities as business income.

Maintenance of separate books of accounts and frequency of transaction are key factors to determine the characterisation of income from purchase and sale of shares

CIT *v.* M/s D&M Components Limited [2014] 45 taxmann.com 382 (Delhi)

Characterisation of income would depend in each case on the total impression and effect of all relevant factors and circumstances. Non-maintenance of separate books together with frequent transactions is sufficient for income from shares to be assessed as business profits instead of short term capital gains.

Facts

D&M Components Limited (taxpayer) was engaged in the business of dealing in auto spare parts and investing in bonds, mutual funds and other securities. The taxpayer claimed long term as well as short term capital gains on sale of securities during the year under consideration. The taxpayer did not maintain separate books of accounts for transactions in securities.

The TO, having regard to the normal business activities of the taxpayer and the pattern of sale and purchase transactions, held that the income from transactions in securities was business income. On appeal to the Tribunal ruled in favour of the taxpayer and held the entire income to be in the nature of capital gains. Aggrieved by the order of the Tribunal, the Revenue appealed to the High Court (HC).

Held

In this case, the HC ruled in favour of the taxpayer in respect of long term capital gains since the transactions were few in number and the purchases were shown as investments in the balance sheets for several years. As regards the short term capital gains, the HC concurred with the CIT(A)'s decision that frequent purchase and sale of shares was indicative of the fact that the main intention of the taxpayer was to trade in shares.

Furthermore, the HC cited the decision in the case of CIT *v.* Associated Industrial Development Company Private Limited [1971] 82 ITR 586 (SC), wherein it had been held that the taxpayer must be in a position to produce evidence from its records that it had maintained distinction between shares held as stock-in-trade and those held as investment.

Having regard to the short duration of holding of the shares and the lack of clarity in the account books, the HC held that the characterisation of sale and purchase of shares as short-term capital gains could not be sustained. The relevant amount was to be treated as business income.

Editor's note

To determine characterisation of income, it has been widely accepted that a holistic analysis of various aspects such as frequency, volume of transactions, intention of the taxpayer, etc. is essential. This decision lays emphasis on the maintenance of separate books of accounts in determining the character of income from sale and purchase of shares.

Assessing personal tax
Personal taxes

Union Budget 2014 - Highlights

The Finance Bill proposes to increase the minimum exemption limit in the case of Individuals, Hindu Undivided Family, Association of Persons, Bodies of Individuals and artificial juridical persons from INR 200,000 to INR 250,000. The exemption limit in the case of resident senior citizens is proposed to be increased to INR 300,000. The applicable surcharge (Surcharge is applicable @ 10% on the income tax where the total income exceeds INR 10 million.) and cess (Education cess applicable @ 3% on the income tax and surcharge, as the case may be) remains unchanged. The tax slab rates applicable are as follows:-

Proposed Income Slab (INR)	Tax Rate
0-250,000*	Nil
250,001*-500,000	10%
500,001-10,00,000	20%
Above 10,00,000	30%

**INR 300,000 for individual residents aged sixty years and above; and INR 500,000 for individual residents aged eighty years and above.*

Following are the key highlights of the changes proposed in the Budget: -

- To encourage savings by individuals in the public provident fund scheme, the annual ceiling is proposed to be increased to INR 150,000 from the present limit of INR 100,000.
- Under the existing provisions, a deduction of INR 150,000 per annum is allowed for payment of interest on housing loan for self-occupied house property. It is proposed to increase the deduction of interest to INR 200,000 per annum.
- The Bill proposes that the employees of the private sector would be eligible to take the benefit of the deduction in respect of the notified pension scheme irrespective of the date of joining. Furthermore, the deduction available under the scheme is restricted to INR 100,000.
- The Finance Bill has proposed to increase the deduction under section 80C of the Act from INR 100,000 to INR 150,000.
- The long term capital gain arising on sale of a unit of a mutual fund (other than an equity orientated mutual fund) is proposed to be taxed at 20% (with indexation benefit). The option of taxing at 10% without indexation has been withdrawn. Further, the holding period of such units and also for unlisted shares is proposed to be increased from 12 months to 36 months for such gains to qualify as long term capital gains.
- Exemption of long term capital gain by investing in tax saving bonds under section 54EC is proposed to be restricted to INR 50,00,000 whether such investment is made within the year of the transfer of asset or in subsequent year. Taxpayers, depending upon the timing of transfer of asset, used to avail the deduction of INR 50,00,000 in the year of transfer and also another INR 50,00,000 in the subsequent year by investing in the specified bonds within 6 months threshold.
- It is proposed that any money received as an advance or otherwise which is forfeited due to failure of negotiations not resulting in transfer of capital assets, shall be taxable as income from other sources.

Case law

Taxation of family pension

Family pension received from deceased wife's employer in UK not taxable in India in view of Article 23(3) of the India-UK Treaty

ACIT *v.* Karan Thapar [2014] 46 taxmann.com 46 (Delhi-Tribunal)

Amount received by the taxpayer as Family Pension from his deceased wife's employer in UK does not fall under Article 20(1) and Article 23(1) of India-UK tax treaty, and will be covered under Article 23(3), since taxpayer is in receipt of family pension as nominee of the deceased rather than the beneficial owner of the income.

Facts

The taxpayer's wife was working in United Kingdom (UK) with Royal Bank of Scotland (RBS), she died on April 22, 1989 while she was in service. After death of his spouse, taxpayer was receiving family pension from RBS under the family pension scheme. Taxes on the pension were paid in U.K. During AY 2000-01, taxpayer became Resident and Ordinarily Resident and TO taxed the family pension income in India stating that it is covered under Article 20(1) of the India-UK tax treaty. Taxpayer challenged the assessment order before the CIT(A).

The CIT(A) held that Article 20(1) of the treaty only covered pension and did not include Family Pension. The income would be covered under Article 23(3) (Any pension, other than a pension referred to in Article 19(2) of this Convention, or annuity paid to a resident of a Contracting State shall be taxable only in that State) of the tax treaty accordingly would not be taxable in India. Aggrieved by the order, the revenue filed an appeal before the Tribunal. The Tribunal remitted the issue back to TO to analyse the same based on the taxpayer's submissions.

The TO again decided the issue against the taxpayer. However, now he considered the family pension to be taxable under Article 23(1) (Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention, and arising in the other Contracting State may be taxed in that other State) of the tax treaty. The taxpayer filed an appeal before the CIT(A), which granted relief to the taxpayer under Article 23(3) of the tax treaty. The revenue filed an appeal before Tribunal.

Held

The Tribunal held that the amount was being received by taxpayer as nominee of the deceased and therefore the taxpayer could not be considered as beneficial owner of the income. Further, the family pension was being paid out of the trust/ estate of the deceased and administered by the bank. Therefore, pension received by the taxpayer was beyond the purview of Article 23(1) of India-UK tax treaty as the said article specifically covered income not dealt with in any of the foregoing articles of the tax treaty, which was beneficially owned by a resident of the contracting state but did not exclude "income paid out of trusts or the estates of deceased persons in the course of administration". Further, the Tribunal considered the family pension under Article 23(3) of the tax treaty, which was residuary in nature. As per this article, if the income arose in other contracting state (i.e. UK) and the contracting state (India) charged the tax then the contracting state in which taxpayer was resident (India) could not charge any tax on the same income. Accordingly, the appeal was dismissed.

Assessment of loss from foreign house property in hands of resident assessee in India

Sumit Aggarwal *v.* DCIT [2014] 45 taxmann.com 345 (Chandigarh-Tribunal)

Under section 90(2) of the Act, where tax treaty was applicable, the taxpayer had an option to apply either Indian tax laws or DTAA, whichever was beneficial to him.

Facts

The taxpayer filed his personal tax return for AY 2008-09 declaring an income of INR 24.2 millions after computing loss from house property on account of payment of interest of INR 1.04 millions to ANZ Bank, Australia with respect to the property purchased and let out in Australia.

The TO contended that as per section 25 of the Act, interest which is payable outside India on which tax has not been paid or deducted in India, shall not be considered for providing deduction in computing the income under the head income from house property under the Act. Since the taxpayer had not withheld tax, therefore, the income from the property was assessed to tax after ignoring claim of the interest.

CIT(A) observed that interest payment to ANZ bank, Australia was on account of money borrowed by the taxpayer for the purpose of purchasing property from which the applicant has earned rental income. He observed that interest received by the ANZ Bank could not be deemed to accrue or arise in India, and therefore not chargeable to tax in India. Therefore, the appellant was not liable to withhold any tax on the interest paid to the bank on borrowed money.

However, the CIT(A), referring to the decision of CIT *v.* PVAL Kulandagan Chettiar [2004] 267 ITR 654 (SC), contended that the taxpayer was required to file the return in Australia and therefore the negative income could not be assessed in India. Accordingly, such income or loss could not be included in Indian income, and income or loss arising from property situated in Australia was taxable/ allowable only in Australia and not in India, referring to the above decision. Aggrieved, the taxpayer filed an appeal before Chandigarh Tribunal.

Held

As per section 5 of the Act, in case of a resident, income accruing or arising outside India had to be assessed in India. Further, section 90(2) of the Act showed that wherever tax treaty was applicable, then taxpayer had an option to apply either Indian tax laws or the provisions of the tax treaty, whichever was more beneficial to the taxpayer. Therefore, it was clear that the taxpayer had an option to file tax return under Indian tax laws where the tax treaty was applicable. In the present case, appellant exercised the option of filing tax return under Indian law and the same could not have been refused, because the tax treaty was applicable. The taxpayer had the right to file return of global income in India and the revenue was bound to give effect to such return. The Tribunal rejected the applicability of CIT *v.* PVAL Kulandagan Chettiar [2004] 267 ITR 654 (SC) cited on the basis that facts of that case were different.

Ruling in favour of taxpayer, Tribunal concluded that CIT(A) was not justified in holding that loss from house property arising in Australia was not assessable in India.

Structuring for companies
Mergers and acquisitions

Union Budget 2014 - Highlights

Withholding taxes on foreign currency borrowings

Interest payment on money borrowed by an Indian company in foreign currency under loan agreement or by way of issue of long term infrastructure bonds (from July 1, 2012 to July 1, 2015) is subject to tax withholding @ 5%. It has now been proposed to extend the beneficial withholding tax rate of 5% to interest on borrowings by way of issue of other long term bonds as well. It is also proposed to extend the window for making such eligible borrowings up to July 1, 2017. This amendment is effective from October 1, 2014.

Characterisation of income in case of FII

The definition of 'capital asset' has been amended in order to bring certainty in characterisation of income arising from transactions in securities by FII. Any investment in securities by FIIs as per the SEBI regulations would be treated as a capital asset and thus liable to tax on capital gains.

Holding period of unlisted securities (including shares and mutual funds)

Currently, shares, listed securities, units of UTI/ mutual funds and zero coupon bonds were treated as long term capital assets if held for more than 12 months.

Now, unlisted shares and securities and units of mutual funds (other than equity oriented mutual funds) would need to be held for more than 36 months to be treated as a 'long term capital asset'.

The Finance Budget 2014 has proposed the following taxation regime for Business Trusts (BT) registered as an Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT), the units of which will be listed on a recognised stock exchange.

Taxation on contribution of shares in company to the BT for units in the BT

- Capital gains on contribution of shares in the Indian company (Special Purpose Vehicle [SPV]) by the transferor to the BT in exchange for units in the BT shall be deferred. The tax liability will arise at the time of disposal of such units by the Transferors
- Minimum Alternate Tax may continue to apply on the transferor on book profits arising on such swap of shares
- The preferential capital gains regime (consequential to levy of Securities Transaction Tax [STT]) available in respect of units of BT will not be available to the transferor in respect of these units at the time of disposal
- For computing the capital gains in the hands of the transferor on sale of such units, the cost of the units shall be deemed to be the cost of acquisition to the Transferor of the shares of SPVs contributed
- The holding period of shares in the SPV, prior to the contribution of shares in the BT, shall also be included in the holding period of such units

Taxation regime for the BT, SPV and unit holders

Interest Income

- Income by way of interest received by the BT from the SPVs will be accorded a pass through status – such interest income shall not be taxable in the hands of the BT and there shall be no withholding tax at the level of the SPV
- Distribution of such income by BT to the unit holders will attract withholding tax @5% in case of payment to non-resident unit holders and @10% in case of payment to a resident unit holder
- Interest income received by the resident unit holders shall be taxable at the normal rates

Dividend Income

Dividend distributed by the SPV shall be subject to DDT - such dividend shall be exempt from tax in the hands of BT and unit holders

Capital gains earned by the BT

Capital gains on disposal of assets by the BT shall be taxable in the hands of the BT at the applicable rates. Onward distributions of such income would be exempt in the hands of the unit-holders

Other Income streams of BT

- Income of the BT, other than capital gains, dividend and interest income from SPVs, shall be taxable at the maximum marginal rate.

Onward distributions of such income would be exempt in the hands of the unit-holders.

- Capital gains on transfer of units of BT through stock exchanges would be liable to STT. Gains earned by unit holders on such sale of units would be exempt from tax if the units qualify as long-term capital assets. A lower rate of 15% (plus applicable surcharge and cess) would be applicable to short-term capital assets. The gains will be treated as long term, if the unit is held for more than 36 months, else it is taxable as short term.
- Where BT takes an external commercial borrowings, then the beneficial rate of 5% shall be available under section 194LC on interest payment to non-resident lenders.

Case law

Interest-free loans to partners of LLP at the time of conversion of a company into a LLP would disentitle LLP from capital gains exemption –gains to be computed on book value of assets transferred and not market value

Aravali Polymers LLP *v.* JCIT [TS-385-ITAT-2014(Kolkata-Tribunal)]

Facts

Aravali Polymers Private Limited (Aravali Polymers) was converted into a Limited Liability Partnership (LLP) under section 56 of the Companies Act and the taxpayer, Aravali Polymers LLP (Aravali LLP), came into existence. Aravali Polymers held 3.18 million shares of East India Hotels Limited which were transferred to Aravali LLP. Aravali Polymers also had reserves and surplus amounting to INR 30 millions on the date of conversion. Post conversion, the taxpayer sold 0.3 million shares for INR 530 millions. The taxpayer also gave interest-free loans of INR 500 millions to the partners in their profit sharing ratio. While filing its Return of Income, the taxpayer offered capital gains on sale of equity shares of East India Hotels Limited and also claimed an exemption under section 47(xiiib) of the Act.

The TO held that there was a violation of provisos (c) and (f) of section 47(xiiib) of the Act on granting interest-free loans and consequently held that section 47A(4) of the Act relating to withdrawal of exemption would be triggered. The TO adopted the market value of the shares in East India Hotels limited for computing capital gains in the hands of LLP.

Held

- There was contravention of proviso (f) to section 47(xiiib) of the Act since interest free loan had been granted to the partners in their profit sharing ratio out of the accumulated reserves standing on the date of conversion.
- The exemption under section 47 (xiiib) of the Act was not available to the taxpayer since conversion and violation of section 47(xiiib) of the Act took place in the same AY. Hence, instead of section 47A(4) of the Act, section 45 of the Act would apply.
- Accordingly, in computation of capital gains on transfer of assets to LLP, the value at which the assets were taken over by the LLP would be the sale price; and cost of acquisition was to be taken as per the books of the erstwhile company.

Editor's note

This is the first ruling post introduction of LLP provisions in the Act and provides some guidance on how the exemption from capital gains can be availed or rather, in what circumstances could there be a clear violation of the conditions set out in the exemption provision.

Capital gains to be computed by taking fair market value as cost of acquisition where cost of acquisition to previous owner is not ascertainable

Thakur Dwara Shri Krishanji Maharaj Handiyaya *v.* CIT [TS-291-HC-2014(Punjab & Haryana)]

In case the cost of acquisition of a capital asset to the previous owner could not be ascertained, it had to be equal to fair market value on the date of acquisition or on a specified date, i.e. April 1, 1981, at the option of the taxpayer and accordingly, capital gains had to be computed on sale of such asset.

Facts

The taxpayer received an agricultural land in Barnala by way of gift from the Maharaja of Patiala. During FY 2005-06, the said land was acquired by the Improvement Trust, Barnala for a compensation of INR 27.8 millions. Since the Maharaja of Patiala didn't incur any cost on acquisition of such land, the taxpayer claimed that the cost of acquisition of land in the hands of previous owner i.e. Maharaja of Patiala couldn't be ascertained and accordingly such sale of land was not taxable under section 45 of the Act.

The TO rejected the claim of the taxpayer and by applying the provisions of section 55(3) of the Act, computed capital gains by adopting the fair market value as on April 1, 1981 as the cost of acquisition of the land.

While the taxpayer got relief at the first appellate level, the Tribunal, relying on the HC decision in the case of CIT *v.* Raja Malwinder Singh

[2011] 334 ITR 48 (P&H), reversed the first appellate order. Aggrieved, the taxpayer filed an appeal to the HC.

Held

The HC relied on the ruling of the Full Bench in the case of Raja Malwinder Singh in which it was held that even in a case where cost of acquisition of the asset to the previous owner could not be ascertained, section 55(3) of the Act statutorily prescribed the cost to be equal to the market value on the date of acquisition. If the value could not be ascertained, it had to be equal to market value on a specified date, i.e. April 1, 1981, at the option of the taxpayer. Accordingly, the HC ruled in the favour of the Revenue.

Editor's note

The Punjab and Haryana HC relied on the decision in the case of Raja Malwinder Singh, in which it distinguished the decision of the Supreme Court (SC) in the case of B.C. Srinivasa Setty and held that if the cost of acquisition of asset to the previous owner was not ascertainable, the capital gains would have to be computed by taking cost of acquisition as fair market value of the asset on the date of acquisition of asset or on the specified date, i.e. April 1, 1981, at the option of the taxpayer.

Resolution by Postal ballot not a substitute for court-convened meeting

Godrej Industries Limited [2014] 120 CLA 62 (Bombay)

Facts

Godrej Industries Limited filed an application for direction before the Bombay HC for dispensing with a shareholder meeting and instead passing the resolution through Postal ballot for approval of scheme of amalgamation with Wadala Commodities Limited.

Issue

Whether in view of section 110 of the Companies Act, 2013 (Companies Act) and Securities and Exchange Board of India (SEBI) Circular dated May 21, 2013, a resolution for approval of a scheme of amalgamation could be passed by a postal ballot in complete substitution of an actual meeting?

Held

- HC held that provisions relating to compulsory voting by postal ballot and by electronic voting to the exclusion of an actual meeting did not apply to court-convened meetings.
- Provision must be made for postal ballots and electronic voting, in addition to an actual meeting. Electronic voting must also be made available at the venue of the meeting.
- The effect, interpretation and implication of the provisions of the Companies Act and the relevant SEBI circulars and notifications, to the extent that they mandated a compulsory or even optional conduct of certain items of business by postal ballot (which includes electronic voting) to the exclusion of an actual meeting, were matters that require a fuller consideration.

Editor's note

The HC order reinforced the importance of shareholders' participation in company meetings, especially on crucial matters such as arrangements/ mergers. The decision also highlighted the importance of postal ballots as supplementary tool for wider shareholder participation, and not as a substitute for actual meetings.

Pricing appropriately
Transfer Pricing

Union Budget 2014 - Highlights

Apart from other direct and indirect tax proposals, on the transfer pricing front, the Finance Minister has focussed on measures to provide certainty and reduce litigation. The proposed amendments, allowing for the rollback of Advance Pricing Agreements (APA) to cover the previous four years, will allow taxpayers to use a range of results as well as multiple-year data for comparability analysis; these are steps towards aligning Indian transfer pricing practice with international best practice. These proposals are most welcome, especially in the uncertain and litigious environment that Indian taxpayers are currently subjected to. It is to be seen how these proposals are actually enacted in the fine print, i.e., the Finance Act and/ or Income-tax Rules/ circulars, etc, to be issued going forward. The amendment around the range should have been reflected in the Finance Bill itself, which it is not, thus, the Government might consider introducing it subsequently through Income-tax Rules/ circulars or at the time of enactment of the Finance Bill. Be that as it may, the intentions of the Government appear clear in this regard, as is evident from the Budget speech of the FM.

Readers will also recall that in August, 2013, the Government of India set up the Tax Administration Reform Commission (TARC) under the chairmanship of Dr. Parthasarathi Shome to review and strengthen the administration of the Indian tax system. In June 2014, the Commission released the first TARC report, which hopes to take India's tax administration to the next level. The report covers the prevailing status of tax administration in India, global practices in the area of tax administration and the gap between the prevailing structure and global best practice, with recommendations on how to bridge it. The report contains refreshingly significant recommendations for a comprehensive transformation of the tax administration, founded on accountability and recognition of the taxpayer as a customer. Though TARC has not been referred to in the Budget for this year, we are looking forward to the implementation of the recommendations in the upcoming months, which will go a long way in changing perceptions of the Indian tax administration.

This communiqué also summarises a few Income-tax Tribunal rulings passed during the past month on cases involving transfer pricing issues.

Case law

Delhi Tribunal sets aside the TPO's order that relied on decision in Li & Fung; taxpayer carried out agency functions and assumed minimal risks

Marubeni India Private Limited *v.* DCIT [TS-157-ITAT-2014(Delhi-Tribunal)-TP]

The taxpayer was engaged in providing marketing support services to its Associated Enterprises (AEs) by liasing between various business departments of the group companies and their suppliers/ customers in India. The taxpayer was also involved in trading activities of its own.

During the relevant year, the taxpayer selected the Transactional Net Margin Method (TNMM) to benchmark its international transactions. However, during the course of the assessment, the Transfer Pricing Officer (TPO) held that the marketing support services provided by the taxpayer formed the backbone of the sourcing activities carried on by the AEs, thereby helping the AEs in taking sale and purchase decisions in India. The TPO also held that the taxpayer was making sizeable investments in exploring and analysing the Indian market, and consequently had developed several unique intangibles, which provided a cost advantage to the AEs. Thus, the taxpayer was entitled to compensation for these. The TPO therefore applied the Profit Split Method to benchmark the transaction. In reaching this conclusion, the TPO relied on the Delhi Tribunal's order in the case of Li & Fung (India) Private Limited *v.* DCIT [2012] 143 TTJ 201 (Delhi–Tribunal), in which a similar stand was taken. The Dispute Resolution Panel (DRP) upheld the TPO's adjustment.

On appeal, the Tribunal held that:

- The taxpayer was merely acting as a mediator between the AEs and the customers/ suppliers by supplying marketing information and liaising with the vendor without undertaking any critical or extensive marketing function. The capital employed was minimal with limited risks being borne by the taxpayer.

- The order of the Delhi Tribunal in the case of Li & Fung (India) Private Limited (*supra*) could not be sustained because of its reversal by the Delhi HC. Furthermore, the remuneration model followed in that case was different from that of the taxpayer.
- The taxpayer was providing an agency function and did not hold any title to the goods. Risks and rewards went hand-in-hand with title to goods.
- The TNMM was the most appropriate method since it was accepted by the taxpayer and also as an alternate approach by the TPO.

The Tribunal set aside the impugned order and restored the matter to the TPO for a fresh determination of the arm's length price (ALP) of the disputed international transaction under the head, 'provision of agency and marketing support services'.

Editor's Note

It is worthwhile to mention that the Tribunal in the above decision upheld the basic canons and fundamentals of transfer pricing; the function, asset and risk profile of the taxpayer was analysed and the conclusion was drawn that it was acting as a service provider with minimal risks.

Delhi Tribunal upholds Resale Price Method (RPM) as most appropriate method for distributors who do not add any value –allows appropriate economic adjustments to comparables, rejecting application of persistent loss and negative net worth filters

Danisco (India) Private Limited *v.* ACIT [TS-169-ITAT-2014(Delhi-Tribunal)-TP]

The taxpayer was engaged in manufacture of food flavours and trading in food ingredients. For manufacturing food flavours, it imported some raw materials from its AEs, and for the trading business, it imported ingredients and resold them to third parties in India through its distribution channels without any value addition. The taxpayer aggregated all the international transactions and benchmarked them using the TNMM. To support the arm's length nature of imports of finished goods for trading, the taxpayer also conducted a supplementary analysis by applying the RPM. During the assessment, the TPO rejected some comparables selected by the taxpayer by applying filters such as persistent loss and negative net worth. Additionally, the TPO also disallowed the economic adjustments carried out by the taxpayer. Subsequently, the TPO selected only those comparables that were involved in manufacturing and not in trading. The TPO made a transfer pricing adjustment that was not confined to the international transaction value but applied to the entire entity, which the DRP upheld.
On appeal, the Tribunal directed that:

- The RPM should be applied as the most appropriate method for trading in imported goods, if the taxpayer did not add any value to the traded goods.
- The TNMM should be applied only to transactions pertaining to imports of raw materials for manufacturing, taking segmental data into account and after selecting appropriate comparables.
- Filters like negative net worth and persistent loss could not be applied in this case for comparability analysis.
- Appropriate economic adjustments should be allowed to mitigate the difference between the taxpayer and the comparables.

The Tribunal set aside the matter to the file of the TPO for fresh consideration.

Delhi High Court holds that Benefit Test is the TO's authority and computing the ALP was the TPO's; comprehensive transfer pricing analysis is required to justify cost

CIT *v.* Cushman and Wakefield India Private Limited [TS-150-HC-2014(Delhi-Tribunal)-TP]

The taxpayer was rendering services connected to the acquisition, sale and leasing of real estate and other advisory and research project management services in the real estate sector. The taxpayer reported several international transactions, which included the payment of referral fees to AEs and the reimbursement of AEs for the costs incurred by them for certain co-ordination and liaison services provided to the taxpayer. During assessment proceedings, the TPO disallowed expenditure relating to reimbursement, determining the ALP as *nil* on the grounds that no intra-group services existed, and that the taxpayer did not file any evidence to support its position that these services were actually rendered. The TPO also noted that the taxpayer might have received only incidental benefit from the global relationship between the AEs and clients. The TPO concluded that the referral fees were at arm's length. However, the TO disallowed these under section 37 of the Act, stating that the taxpayer had failed to demonstrate the genuineness of the transaction, the receipt of any services, and their business purpose. The DRP upheld the adjustments made by the TO/TPO.

On appeal, the Tribunal reversed the TO's order and held that the taxpayer had submitted ample evidence to support the expenditure and it had shown that such expenditure had been incurred with respect to revenue earned by the taxpayer. On the reimbursement of expenses, while rejecting the TPO's contention relating to 'incidental benefits', the Tribunal held that the services had indeed been rendered by the AEs.

On appeal, the HC held that:

- In case of reimbursements at cost, whether the cost had been inflated or not was a matter to be tested through a comprehensive transfer pricing analysis.
- The authority of the TPO was to conduct a transfer pricing analysis to determine the ALP, and not to determine whether there had been a service rendered or not, or the extent to which the taxpayer had benefitted from it. That aspect of the exercise was left to the TO under section 37 of the Act. The TO could therefore disallow expenditure under section 37 of the Act, if the expenditure claimed was not for the benefit of the business.
- The TPO's decision in relation to determination of the ALP was binding on the TO.
- Neither the Revenue nor the Court could question the commercial wisdom of the taxpayer or replace its own assessment of the commercial viability of the transaction.

The matter was remanded back to the TO for ALP determination by the TPO in relation to the reimbursement. Regarding the referral fees, the matter was remanded to the TO's file for a detailed verification of facts in support of reasoned conclusions, with the TO being bound by the TPO's approval of the pricing of the referral fees.

Editor's note

The above ruling of the HC emphasises the importance of analysing and preparing the relevant documentation surrounding transactions even in the nature of cost-to-cost reimbursements where there is no income element. The High Court's observation that the Revenue could not question the commercial wisdom of the taxpayer is welcome.

Canada provides new guidance concerning contemporaneous documentation

PricewaterhouseCoopers Tax Insights

In June 2014, the Canadian Revenue Agency (CRA) clarified the process for requesting contemporaneous documentation, the applicability of the three-month response deadline and the manner in which taxpayers are expected to comply with this request. The revised memorandum strongly reiterates that taxpayers must respond to all CRA requests for contemporaneous documentation.

The CRA believes these changes will help correct some of the inaccurate assumptions and avoidable mistakes that many taxpayers make when preparing contemporaneous documentation. Specifically, the new rules provide for the following:

- Requests must now be issued by letter only on initial contact with the taxpayer for each year under audit.
- Auditors must now contact the Competent Authority (CA) prior to issuing a request where a taxpayer has notified the CA of its intention to proceed with an APA.
- The three-month deadline for providing contemporaneous documentation cannot be interpreted to mean a certain number of days. Specific examples are provided on how to calculate the three-month period.
- Auditors must accept and review documentation provided after the three-month deadline.
- To satisfy the "reasonable efforts" requirement, taxpayers may choose to provide the exhaustive list of documents stipulated by the Pacific Association of Tax Administrators (PATA) (note that PATA was dissolved in 2007 and is currently known as the Leeds Castle Group).

Taxing of goods and services
Indirect taxes

Union Budget 2014 - Highlights

The Union Budget has taken a major step towards certainty in tax legislation by extending an advance ruling to resident taxpayers and by providing a forum to address issues faced by industry. The FM has promised action during the year to resolve various issues for the advent of GST. The Budget has also taken steps to address the inverted duty structure for specified sectors, rationalisation of duty rates, review of the negative list and exemptions for services. Overall, the Budget reiterates the Government's commitment to tax reforms and clarity in tax legislation.

Case law

VAT/Sales tax/Entry tax/ Professional tax

Contract for manufacture, supply and installation of lifts was a works contract and not a contract for sale

Kone Elevators India Private Limited *v.* State of Tamil Nadu [2014] 45 taxmann. com 150 (SC)

The Constitution Bench of the SC held that the transaction of manufacture, supply and installation of lifts was a works contract and not a contract for the sale of lifts. The SC has reversed the principles laid down by a three-member bench of the SC in the case of Kone Elevator India Private Limited reported at (2005-3-SCC 389). The SC reiterated the position of law that pursuant to the 46th amendment to the Constitution of India, 'Test of dominant nature'/ 'Test of degree of intention' was not applicable in the case of composite contracts involving supply of goods and provision of labour/ services, which fell within the ambit of clause 29A(b) of Article 366 of the Constitution.

Use of stents and valves as an intrinsic and integral element in the performance of heart surgery on in-patients in a hospital did not involve any element of sale

International Hospital Private Limited *v.* State of Uttar Pradesh and Others [2014-71-VST-139-All]

The Allahabad HC held that the use of stents and valves as an intrinsic and integral element in the performance of a heart surgery on in-patients in a hospital did not involve any element of sale in spite of the fact that the bill raised on the patients shows charges towards drugs and other consumables separately. The dominant intention of the contract was the performance of a medical procedure, and there was no contract for sale of/ intention to sell stents and valves. The present case did not involve application of any of the sub-clauses of article 366(29A) of the Constitution of India, and therefore, there was no element of sale involved.

CENVAT

Eligibility of credit on capital goods had to be determined with reference to the dutiability of the final product on date of receipt of such goods

Global Oil Industries Limited *v.* CCCE&ST [2014-TIOL-594-CESTAT-BANG]

The Bangalore Tribunal held that eligibility of credit had to be determined with reference to the dutiability of the final product on the date of receipt of capital goods and hence, credit would not be admissible if final products were exempted on the date of receipt of such capital goods.

Cost of packing of a durable that is returnable in nature not includible in assessable value

CCE *v.* Owens Brockway (I) Limited [2014-TIOL-809-CESTAT-MUM]

The Mumbai Tribunal held that the cost of packing of a durable that was returnable in nature was not includible in the assessable value.

Service tax

Where in a works contract, service charges are disclosed separately, service tax is payable only on service charges

Khem Sales Agencies *v.* CCE [2014-TIOL-708-CESTAT-DEL]

The Delhi Tribunal held that in a works contract, where the value of taxable services had been separately mentioned in the agreement as well as on the invoices, the same could not be treated as an indivisible works contract. Accordingly, service tax would be payable only on the value of the contract which pertained to taxable services.

Service tax paid on advance money could be claimed as a refund on cancellation of the service agreement

Gujarat Nippon Enterprise Private Limited *v.* CST [2014-TIOL-784-CESTAT-MUM]

The Mumbai Tribunal held that where advance money was returned on cancellation of the service agreement, the amount of service tax paid at the time of receipt of advance money could be claimed as refund as the tax was paid inadvertently.

Value of material supplied free of cost by contractee cannot be added to the taxable value of the contract

Hindustan Steel Works Construction Limited *v.* CCE [2014-TIOL-946-CESTAT-DEL]

The Delhi Tribunal held that the value of cement and steel supplied free of cost by the contractee to the contractor for providing 'commercial or industrial construction' services could not be added while determining the value of the contract liable to service tax. The Tribunal relied upon the decision of a larger bench in Bhayana Builders Private Limited *v.* CST [2013-TIOL-1331-CESTAT-DEL-LB].

Customs / Foreign Trade Policy (FTP)

Items imported could not be said to be unassembled articles in completely knocked down form to be classified as assembled articles, where they undergo manufacturing and processing activity to create finished goods

CC *v.* D-Link India Private Limited [2014-TIOL-669-CESTAT-MUM]

The Mumbai Tribunal held that where the items imported underwent manufacturing and processing activity, the items imported could not be said to be unassembled articles in completely knocked down form that were to be classified as assembled articles. These had to be treated as parts and components as these were subjected to manufacturing to create finished goods.

Duty drawback for indigenous manufacture in terms of section 75 of the Customs Act held not allowable where the imported and exported goods were found to be the same

KLT Automotive and Tabular Products Limited [2014 (303) ELT 294]

In a revision application before Department of Revenue, the Government of India held that duty drawback for indigenous manufacture in terms of section 75 of the Customs Act was not allowable where the imported and exported goods were found to be the same, and the imported goods were not subjected to any processing in India. In such a case, a claim could have been filed under section 74 of the Act.

No anti-dumping duty could be levied retrospectively through corrigendum on an importer

Act Shipping Limited *v.* CC [2014-TIOL-971-CESTAT-AHM]

The Ahmedabad Tribunal held that no anti-dumping duty could be levied retrospectively through a corrigendum on an importer who had already filed a bill of entry in relation to imported goods landed in India.

Manufacturer having availed DEPB benefit, cannot be allowed to avail rebate of duty paid on inputs used in manufacture of goods as the same would amount to double benefit

Hi Speed Offsets [2014 (303) ELT 316 (GOI)]

The Revisionary Authority, Department of Revenue, held that a manufacturer having availed of a Duty Entitlement Pass Book (DEPB) benefit, could not be allowed to avail a rebate of duty paid on inputs used in manufacture of goods, as the same would amount to a double benefit.

Following the rulebook
Regulatory developments

FEMA

Amendments proposed in Foreign Policy by Budget 2014

The Union Budget 2014 has proposed following sector-specific liberalisation in the Indian FDI regime:

Defence and Insurance Sector

The composite cap for foreign investment is proposed to be enhanced from 26% to 49% in defence and insurance sector under Approval Route. The management and control of the Indian JV Company needs to be fully with Indians.

Construction Development Sector

- Conditions linked to foreign investment in construction development sector is proposed to be relaxed as below:
  - Reduction in minimum area to be developed in case of construction development projects from 50,000 sq. mts to 20,000 sq. mts.
  - Reduction in minimum capitalisation amount in case of Wholly Owned Subsidiary (WOS) from USD 10 million to USD 5 million.
- Projects with committed cost of at least 30% of the total project cost for low cost affordable housing is proposed to be exempted from minimum built-up area and capitalisation requirements. However, condition of three year lock-in will continue to apply.

Manufacturing Sector

Manufacturing units will be allowed to sell its products through retail including e-commerce platforms without any additional approval.

The aforementioned proposed liberalisation would come into effect upon issuance of appropriate Press Note by the Government.

Amendments introduced by the RBI

Foreign Direct Investment

FDI in non-convertible/ redeemable preference shares or debentures of Indian companies

A.P. (DIR Series) Circular No. 140 dated June 6, 2014

The RBI had recently (A.P. (DIR Series) Circular No. 84 dated January 6, 2014) permitted Indian companies to issue non-convertible/ redeemable preference shares or debentures to non-resident shareholders, by way of distribution as bonus.

The RBI has now allowed FIIs, QFIs (deemed as registered FPIs), registered FPIs, long term investors registered with SEBI, *viz.* Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks to invest on repatriation basis, in such non-convertible/ redeemable preference shares or debentures issued by Indian Companies within the overall limit of USD 51 billion earmarked for Corporate debts.

NRIs are permitted to invest both, on repatriation and non-repatriation basis.

Pledge of shares for business purposes in favour of Non-Banking Financial Companies (NBFCs)

A.P. (DIR Series) Circular No. 141 dated June 6, 2014

Presently, AD Category-I (AD) banks are authorised to permit non-resident investor to pledge shares of the Indian company held by them in favour of a bank in India to secure the credit facilities being extended to the resident investee company for *bona fide* business purposes, subject to specified conditions.

This facility is now extended to credit availed from NBFC (whether listed or not), subject to compliance with following key conditions:

- Equity shares listed on recognised stock exchanges in India can only be pledged;
- In case of invocation of pledge, transfer of shares should be in accordance with credit concentration norms;

NBFC would need to comply with credit concentration norms. In case of breach on account of invocation of pledge, shares need to be sold to rectify the breach within 30 days from the date of invocation of pledge.

Overseas Direct Investment (ODI)

Limit on Financial Commitment (FC)

A.P. (DIR Series) Circular No. 1 dated July 3, 2014

In August 2013 (A.P. (DIR Series) Circular No. 23 dated August 14, 2013), the RBI had reduced the limit of FC/ ODI undertaken by an Indian party from 400% to 100% of the net worth as per the last audited balance sheet.

This limit has now been restored back to original limit of 400%. However, FC exceeding USD 1 billion (or its equivalent) in a financial year would require prior the RBI approval even though the total FC is within permissible limits.

Import and Export of Goods and Services

Long Term Export Advances for a maximum tenor of 10 years

A.P. (DIR Series) Circular No.132 dated May 21, 2014

Indian exporters receiving advance towards export of goods need to ship goods within a period of 1 year. Further, AD banks are permitted to approve cases for receipt of advance payment for export of goods for cases which would take more than one year to manufacture and ship.

The RBI has liberalised the policy and permitted export advance up to a maximum tenor of 10 years for Long Term Service Contracts for exporters having a minimum of 3 years satisfactory track record. Key conditions of this window are summarised below:

Key Conditions:

- Firm, irrevocable supply orders should be in place. The contract should clearly specify the nature, amount and delivery timelines of products over the years and penalty in case of non- performance or contract cancellation. Product pricing should be in consonance with prevailing international prices.
- Such export advances shall not be permitted to be used to liquidate Rupee loans, which are classified as NPA as per the RBI asset classification norms.
- Double financing for working capital for execution of export orders should be avoided.
- The rate of interest payable, if any, should not exceed London Inter Bank Offered Rate (LIBOR) plus 200 basis points.

Miscellaneous

Liberalised Remittance Scheme

A.P. (DIR series) Circular No. 138 dated June 3, 2014

The limit under the Liberalised Remittance Scheme (LRS) for resident individuals has been enhanced from USD 75,000 to USD 125,000.

Transfer of assets of Liaison Office (LO)/ Branch Office (BO) / Project Office (PO) at the time of closure

Notification No. FEMA 295/ 2014 – RB dated February 24, 2014 published in the Official Gazette on May 30, 2014 and A.P. (DIR Series) Circular No. 145 dated June 18, 2014

The RBI directed AD banks to process applications for transfer of assets of LO/ BO/ PO to a JV/ WOS or any other entity in India at the time of closure, considering prescribed stipulations.

It is important to note that cases of transfer of assets at instances other than closure will still continue to require an approval from the RBI.

Export and Import of currency – enhanced limit for residents and Non-residents

A.P. (DIR Series) Circular No.146 dated June 19, 2014

The RBI has enhanced the limit for Export and Import of Indian currency notes while going out/ coming to India from INR 10,000 to INR 25,000.

Financial Services

Budget 2014 - Key policy announcements for the Banking/NBFC sector

- Early steps necessary for enactment of the Indian Financial Code (introduced in the Financial Sector Legislative Reforms Commission (FSLRC) recommendations) for better governance and accountability.
- The Government will set up a modern monetary policy framework in consultation with the RBI.
- Indian companies to adopt the Indian Accounting Standards (IAS) from financial year (FY) 2015-16 on a voluntary basis, and from FY 2016-17 on a mandatory basis. Banks will separately notify the RBI of the date of their implementation of the Indian Accounting Standards.
- To meet Basel III capital requirements, a Follow on Public Offer (FPO) of public sector banks is to be undertaken. A proposal to give greater autonomy to banks is to be considered.
- The Government is to consider suggestions concerning the consolidation of public sector banks.
- Banks are encouraged to lend long term funds to the infrastructure segment with flexible structures; on the liability side, long term funds mobilised by banks for lending to infrastructure are to be subject to a minimum regulatory pre-emption.
- A structure is to be put in place for on-tap licensing of universal banks in the private sector; licensing framework to be created for small banks and differentiated banks (such as payments banks etc.)
- To address the issue of rising NPAs in public sector banks, six new Debt Recovery Tribunals (DRTs) are proposed.

Scaling up of the Business Correspondent (BC) Model – issues in cash management

RBI/ 2013-14/ 570 - RPCD.FID.BC.No. 96/ 12.01.011/20013-14 dated April 22, 2014

To scale up the BC model it has been decided that:-

- The Boards of the banks must review the operations of BCs at least once every six months with a view to ensuring that the requirement of prefunding of corporate BCs and BC agents should progressively taper down with the passage of time. Ideally, in all normal cases, the prefunding should progressively come down in such a manner so as to reach around 15% of the limits fixed for each BC/ Customer Service Points in case of deposits and 30% in the case of bank guarantees, etc. in say, 2 years from the time a BC starts operations.
- The Board should also review the position of payment of remuneration of BCs and should also lay down a system of monitoring by the top management of the bank. The issue of allowing BCs to handle deposit and payment transactions of various credits, remittance, overdraft and other products of banks must also be examined by the Board from time to time. A complaints redressal system in this regard should also be laid down by the Board.
- As the cash handled by BCs is the bank's cash, the responsibility for insuring this cash should rest with the banks.

Need for bank branches/ ATMs to be made accessible to persons with disabilities

RBI/2013-14/598 - DBOD.No.Leg. BC.113/09.07.005/2013-14 dated May 21, 2014

Banks have been advised to take necessary steps to provide all existing and future branches/ ATMs with ramps so that wheel chair users/ persons with disabilities can easily access them. Care must also be taken to make arrangements in such a way that the height of the ATMs do not create an impediment in their use by wheelchair users - where such a provision is not feasible, the reasons are to be recorded and displayed in branches or ATMs concerned. Banks are to also make all ATMs installed from July 1 2014 talking ATMs with braille keypads and lay down a road map for converting all existing ATMs to talking ATMs with braille keypads. Magnifying glasses are to be provided at all branches and the availability of the same prominently displayed in the branch. Banks are advised to report the progress made on the same to their respective Customer Service Committees of the Board and ensure compliance.

Operations of foreign branches and subsidiaries of Indian banks – compliance with statutory/ regulatory/ administrative prohibitions/ restrictions

RBI/ 2013-14/ 588 - DBOD. No.BP.BC.111/ 21.04.157/ 2013-14 dated May 12, 2014

It has been decided that if foreign branches/ subsidiaries of Indian banks propose to offer structured financial and derivative products that are not specifically permitted by the RBI in the domestic market, they may do so only at the established financial centers outside India like New York, London, Singapore, Hong Kong, Frankfurt, Dubai, etc.. Banks should ensure that their foreign branches/ subsidiaries dealing with such products in foreign jurisdictions have adequate knowledge, understanding, and risk management capability for handling such products. At other centers, banks may offer only those products that are specifically permitted in India. The products that the foreign branches/ subsidiaries of Indian banks offer at overseas location should be in compliance with the host country's regulations, with prior approval from their Board and appropriate authority in these foreign jurisdictions. Banks should continue to adhere to the more stringent regulations among the host and home regulations in respect of these products. In particular, banks should ensure that the suitability and appropriateness policy is strictly adhered to as mandated by the RBI and the host regulators.

Issuance and operation of pre-paid payment instruments in India – consolidated revised policy guidelines

RBI/ 2013-14/ 590 - DPSS.CO.PD.No. 2366/ 02.14.006/ 2013-14 dated May 13, 2014

It has been decided that para 7.4 (Co-branded pre-paid payment instrument) of the Annex to Guidelines dated March 28, 2014 is to be amended to read as follows:

Existing provisions of Para 7.4 of Annex of Guidelines dated March 28, 2014	Revised provisions of Para 7.4 of Annex of Guidelines dated March 28, 2014
All persons authorised / approved to issue pre-paid payment instruments are permitted to co-brand such instruments with the name/ logos of financial institution/Government Organisation etc. for whose customers/beneficiaries such co-branded instruments are issued. The name of the issuer shall be visible prominently on the payment instrument. Banks/NBFCs/Other persons desirous of issuing such co-branded prepaid instruments may seek one-time approval from Reserve Bank of India.	All persons authorised / approved to issue pre-paid payment instruments are permitted to co-brand such instruments with the name/logos of financial institution / Government Organisation etc. for whose customers/ beneficiaries such co-branded instruments are issued. The name of the issuer shall be visible prominently on the payment instrument. NBFCs/ other persons desirous of issuing such co-branded prepaid instruments may seek a one-time approval from the Reserve Bank of India. However, banks have been granted general permission to issue rupee denominated co-branded prepaid instruments subject to the terms and conditions as mentioned in the circular RBI/2012-13/325 DBOD.No.FSD.BC. 67/24.01.019/ 2012-13 dated December 12, 2012

Treatment of Rural Infrastructure Development Fund (RIDF) and certain other funds under the priority sector

RBI/ 2013-14/ 591 - RPCD. CO.Plan. BC 101/ 04.09.01/ 2013-14 dated May 15, 2014

It has been decided to include the outstanding deposits as on March 31st of the current year under the RIDF, Warehouse Infrastructure Fund, Short Term Co-operative Rural Credit Refinance Fund and Short Term RRB Fund with NABARD placed by scheduled commercial banks on account of their shortfall in lending to priority sector as part of indirect agriculture under the priority sector classification. The outstanding deposits under the above funds with NABARD as on preceding March 31 will form part of the adjusted net bank credit.

Reporting to the Central Repository of Information on Large Credits (CRILC)

RBI/ 2013-14/ 601 - DBS. OSMOS.No.14703/ 33.01.001/ 2013-14 dated May 22, 2014

Lenders have been advised to report separately to CRILC, as under:

- CRILC-Main (Quarterly Submission): This will comprise of four sections i.e. section 1 – Exposure to large borrowers (Global Operations), section 2 – Reporting of technically/ prudentially written-off accounts (Global Operations), section 3 – Reporting of balance in current account (Global Operations) and section 4 – Reporting of non-co-operative borrowers (Global Operations).
- CRILC-SMA 2 and JLF Formation (Submission on 'as and when' basis): There will be two sheets which are to be submitted on an as and when basis, i.e. whenever a large borrower's account becomes overdue for 61 days and/or a Joint Lenders Forum (JLF) is formed in respect of a SMA 2 classified borrower.

Borrower-wise, exposure data is to be submitted to the CRILC-Main and CRILC-SMA 2 and JLF Formation through the XBRL based reporting system with effect from the quarter ending June 2014. The quarterly CRILC Main report is required to be submitted within 21 days from the close of the relevant quarter. As the CRILC data is collected under the provisions of the RBI Act, non-adherence to the reporting instructions attracts penal provisions under the Act.

Levy of foreclosure charges/ pre-payment penalty on floating rate term loans

RBI/ 2013-14/ 612 - RPCD. CO.RCBD.RRB.BC.No.102/ 07.51.013/ 2013-14 dated May 27, 2014

It has been advised that StCBs, CCBs and RRBs will not be permitted to charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual borrowers, with immediate effect.

Disclosure of sector-wise advances

RBI/ 2013-2014/ 647 - DBOD. No.BP.BC.121/ 21.04.018/ 2013-14 dated June 18, 2014

As under the recommendations of the Committee on Comprehensive Financial Services for Small Businesses and Low Income Households (Chairman: Dr. Nachiket Mor), banks are advised to disclose sector-wise advances in the 'Notes to Accounts' to the financial statements as under the format given in the Annex from the financial year 2014-15 onwards. Accordingly, the disclosure requirements contained in the Annex under item "II. Sector wise NPAs" of circular DBOD.BP.BC. No.79/ 21.04.018/ 2009-10 dated March 15, 2010 on 'Additional Disclosures by Banks in Notes to Accounts' shall be replaced by the disclosure requirements specified.

Financial inclusion by extension of banking services – use of business correspondents

RBI/ 2013-14/ 653 - DBOD.No.BAPD.BC.122/ 22.01.009/ 2013-14 dated June 24, 2014

Taking into account the recommendations of the Mor Committee, the existing guidelines on the appointment of Business Correspondents have been reviewed as under:

Eligible individuals/ entities

It has been decided that banks will be permitted to engage non-deposit taking NBFCs (NBFCs-ND) as BCs, subject to the following conditions:

- It should be ensured that there is no co-mingling of bank funds and those of the NBFC-ND appointed as BC.
- There should be a specific contractual arrangement between the bank and the NBFC-ND to ensure that all possible conflicts of interest are adequately taken care of.
- Banks should ensure that the NBFC-ND does not adopt any restrictive practice such as offering savings or remittance functions only to its own customers and forced bundling of services offered by the NBFC-ND and the bank does not take place.

Distance criteria

With a view to providing operational flexibility to banks and in view of the technological developments in the banking sector, it has been decided to remove the stipulation regarding distance criteria. The banks should, however, while formulating the Board approved policy for engaging BCs, keep in mind the objectives of adequate oversight of the BCs as well as provision of services to customers while deciding how to modify extant distance criteria and may continue to take measures to address possible reputational risks arising out the of appointment and functioning of BCs.

Prudential norms on income recognition, asset classification and provisioning pertaining to advances - projects under implementation

RBI/ 2013-14/ 664 - DBOD. No.BP.BC.125/ 21.04.048/ 2013-14 dated June 26, 2014

In this connection, it is clarified that multiple revisions of the date of commencement of commercial operations (DCCO) and the consequential shift in the repayment schedule for an equal or shorter duration (including the start date and end date of revised repayment schedule) *will be treated as a single event of restructuring* provided that the revised DCCO is fixed within the respective time limits prescribed in circulars DBOD.No.BP.BC.85/ 21.04.048/ 2009-10 dated March 31, 2010 and DBOD. BP.BC.No.99/ 21.04.132/ 2012-13 dated May 30, 2013, and all other terms and conditions of the loan remained unchanged.

It may be further clarified that, if deemed fit, banks may extend the DCCO beyond the respective time limits; however, in that case, banks will not be able to retain the 'standard' asset classification status of such loan accounts.

Defaulters of INR 10 millions and above (non-suit filed accounts) and Wilful Defaulters of INR 2.5 millions and above (non-suit filed accounts) – changes in reporting to the RBI/ Credit Information Companies (CICs)

RBI/ 2013-14/ 667 - DBOD.No.CID.BC.128/ 20.16.003/ 2013-14 dated June 27, 2014

It has been decided to implement the following measures with regard to the reporting and dissemination of information on defaulters/ wilful defaulters:

- Banks/ FIs may continue to furnish the data on wilful defaulters (non-suit filed accounts) of INR 2.5 millions and above for the quarter ending June 30, 2014 and September 30, 2014 to RBI. Similarly, in respect of defaulters (non-suit filed accounts) of INR 10 millions and above, they may continue to submit the data to RBI for the half year ending September 30, 2014 in the existing format.
- In terms of Credit Information Companies (Regulation) Act, 2005, banks/ FIs are advised to furnish the aforementioned data in respect of wilful defaulters (non-suit filed accounts) of INR 2.5 millions and above for the quarter ending December 31, 2014 and the data on defaulters (non-suit filed accounts) of INR 10 millions and above for the half year ending December 31, 2014 to CICs and not to RBI. Thereafter, banks/ FIs may continue to furnish data in respect of defaulters/ wilful defaulters to CICs on a monthly or a more frequent basis. This would enable such information to be available to the banks/ FIs on a near real-time basis.
- To facilitate banks/ FIs in furnishing the above data in respect of defaulters/ wilful defaulters, CICs are advised to make necessary changes in the commercial data format so that all the fields, *viz.* Director's Name and type (whether Nominee or Independent director), DIN No., address, date of classification of default, etc. in the existing format used for submitting data to RBI are captured.

Inter-Governmental Agreement (IGA) with United States of America (US) under the Foreign Accounts Tax Compliance Act (FATCA) - registration

RBI/ 2013-14/ 668 - DBOD. AML. No. 20472/ 14.07.018/ 2013-14 dated June 27, 2014

The Government of India (GoI) has advised that India and US have reached an agreement in substance on the terms of an Inter-Governmental Agreement (IGA) to implement FATCA, and India is now treated as having an IGA in effect from April 11, 2014. However, the IGA will be signed only after the approval of the Cabinet.

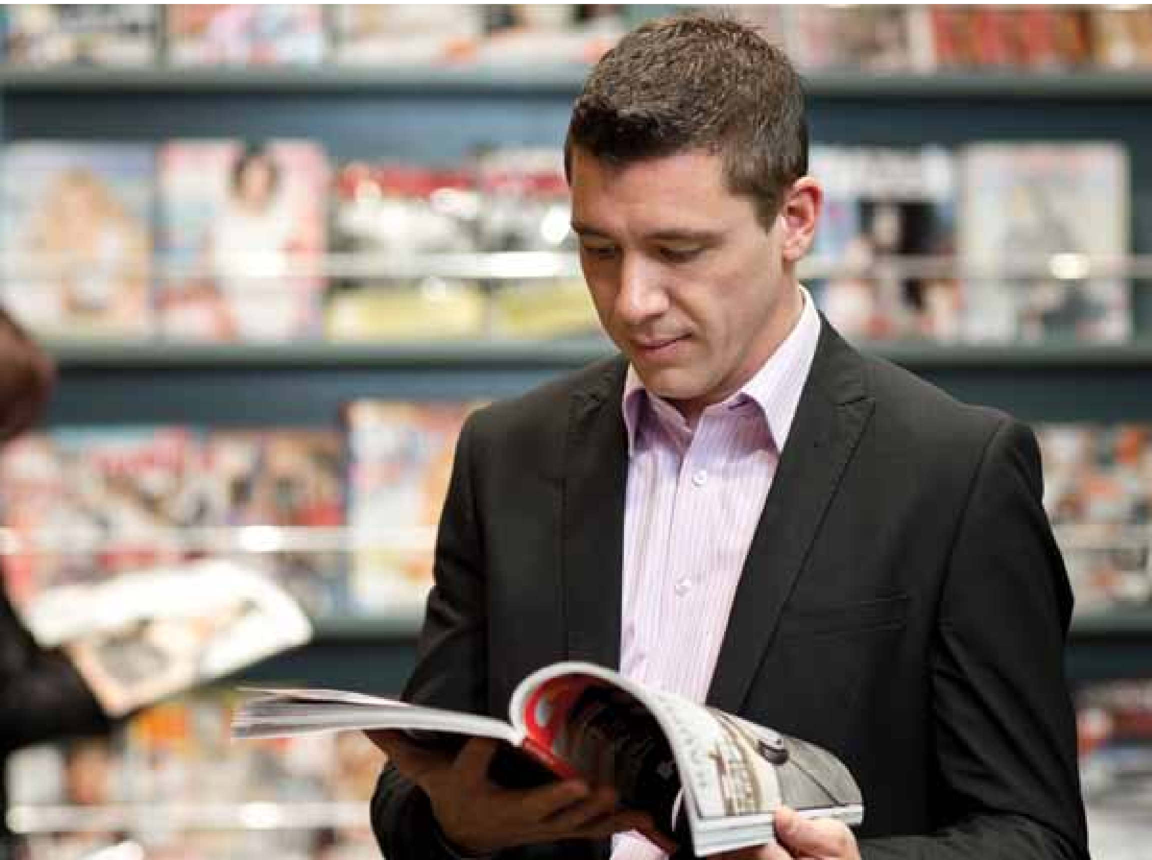
In this regard, Indian financial institutions are advised to take note of the following:

- Indian financial institutions will have until December 31, 2014 to register with the US authorities and obtain a Global Intermediary Identification Number (GIIN).
- Indian financial institutions having overseas branches in Model 1 jurisdictions, including those jurisdictions where an agreement under Model I has been reached in substance, would have until December 31, 2014 to register with the US authorities and obtain a GIIN. Since the IGA will be signed after obtaining the approval of the Cabinet, such financial institutions having overseas branches in Model 1 jurisdictions should register only after the formal IGA is signed. This will be communicated in due course.
- Overseas branches of Indian financial institutions in a jurisdiction having an IGA 2 agreement, or in a jurisdiction that does not have an IGA, but permits financial institutions to register and agree to an FFI agreement, may register with the US authorities and obtain a GIIN before July 1, 2014, to avoid a potential withholding under the FATCA.
- Overseas branches of Indian financial institutions in a jurisdiction that does not have an IGA and does not permit financial institutions to register and agree to a Foreign Financial Institution agreement may not register and their overseas branches will eventually be subject to a withholding under the FATCA.
- The GoI has further advised that if registration of the parent bank/ head office is a pre-requisite for a branch to register, such banks may register as under the time line indicated at (b) and (c) above.

Financial literacy activities conducted by Financial Literacy Centres and rural branches of banks – monitoring system

RBI/ 2014-15/ 118 - RPCD.FLC.No. 218-348/ 12.01.018/ 2014-15 dated July 7, 2014

It has been decided to monitor the financial literacy activities of rural branches of SCBs and RRBs on a quarterly basis. The existing quarterly report on financial literacy activities conducted by FLCs has been modified as prescribed.



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Date	Name	Subject Line
30 June 2014	Nortel Networks India International Inc. *v.* DDIT [TS-355-ITAT-2014(DEL)]	Supply of telecom equipment by overseas group company as a part of a turnkey project creates a PE
24 June 2014	http://www.dsir.gov.in/forms/irdpp/352ab_guidelines_may2014.pdf	New guidelines for approval of in-house R&D centres and submission of report under section 35(2AB) issued
13 June 2014	The Nilgiri Tea Estate Ltd *v.* ACIT [TS-345-ITAT-2014 (COCH)]	Profit on sale of rural agricultural land to be excluded from book profit for calculating MAT
12 June 2014	No. FEMA 295/ 2014 –RB dated 24 February, 2014 published in the Official Gazette on 30 May, 2014	Transfer of assets of Liaison Office/ Branch Office/ Project Office at the time of closure
11 June 2014	Shaan Marine Services Private Limited *v.* DDIT [TS-327-ITAT-2014(Pune)]	Benefit of Article 8 of the India-Cyprus tax treaty is available as long as the enterprise is registered and has headquarters in Cyprus
9 June 2014	http://epfindia.com/Circulars/Y201415/LC_ReviewPet_MarathwaraGraminBank_203.pdf	Employers cannot be forced to contribute over and above the statutory wage limit
5 June 2014	Pan-Asia iGATE Solutions, Mauritius, *In re* [TS-296-AAR-2014]	Long-term capital gains on transfer of listed securities in an off-market transaction by a non-resident to be taxed at lower rate of 10%
29 May 2014	RBI's A.P. (DIR Series) Circular N0. 135 dated 27 May, 2014	Hedging of probable currency risk by importers - Liberalisation
26 May 2014	LML Limited *v.* JCIT [TS-280-ITAT-2014(Mumbai)]	Amounts paid to Banks and Financial Institutions as 'guarantor' of a joint venture company, not deductible as business expenditure
20 May 2014	Commissioner of Wealth-tax *v.* Estate of Late HMM Vikramsinhji of Gondal [TS-258-SC-2014]	Beneficiaries held not taxable in respect of income of overseas discretionary trusts not distributed or received by them
19 May 2014	CIT *v.* Bharat Bijlee Limited [TS-270-HC-2014(Bombay)]	Transfer of a business undertaking as a going concern against share/ bond issue not 'slump sale'
17 May 2014	A.P. (DIR Series) Circular No. 130 dated 16 May 2014	ECB from Direct-Indirect Foreign Equity Holders and Group Companies to be approved by AD Banks (including ECB for General Corporate Purposes permitted from Direct Equity Holders)
13 May 2014	ITO *v.* Bharat Sanchar Nigam Limited [TS-257-ITAT-2014(Mum)]	Maintenance contracts that involve services that are fairly simple would attract withholding under section 194C; vehicle hiring cost would have to be segregated into car rental and payment for other services for the purpose of tax withholding
5 May 2014	Centrica India Offshore Pvt Ltd *v.* CIT & Ors. [TS-237-HC-2014(DEL)]	Delhi High Court upholds AAR ruling on secondment agreement giving rise to Service PE and withholding tax obligations
2 May 2014	Right Tunnelling Co. Ltd. *v.* ADIT [TS-220-ITAT-2014(DEL)]	The method of settlement is of no consequence for the purpose of deduction of tax at source where the payee is a non-resident

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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