

# TECHNICAL UPDATE

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The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Company Law & Accounting Standards, Foreign Exchange Management Act / Export Import Policy & Stock Exchange Board of India related matters are summarized hereunder

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### DIRECT TAX

#### 1. Taxability of Income Arising from Offshore Supply Contract

Following the landmark judgment of the apex court in Ishikawajima Harima Heavy Industries Ltd, the Authority for Advance Ruling (‘AAR’) has held that income arising to a non-resident by virtue of an offshore supply contract does not accrue or arise in India and hence not liable to be taxed in India. The AAR observed that the non-resident did not establish a Permanent Establishment (‘PE’) in India. Moreover, sale of equipments took place outside India and payment towards the same was also made overseas.

Source - Hyosung Corporation, In re (2009) Authority for Advance Rulings (AAR No 773 of 2008)

#### 2. Taxability of Liaison Office Activities in India

In another judgment, the AAR reiterated a settled position on the exclusionary provisions contained in article 5 of the Double Tax Avoidance Agreements. In the instant case, the assessee, a Korean Company had established a Liaison Office (‘LO’) in India which was engaged in preparatory and auxiliary activities on behalf of the head office in Korea. It was established that such LO was not engaged in performing ‘core business activities’ for the HO. Relying upon these facts, the AAR observed that even though the LO has a fixed place in India and the activities conducted by it are linked to main business, however since these are of “preparatory or auxiliary” nature, such LO does not constitute a PE of the Korean company in India per terms of article 5(3)(e) of the Indo-Korean tax treaty.

Source: K T Corporation, In re (2009) Authority for Advance Ruling (AAR no 791 of 2008)

### 3. Incidental Incomes Linked to Export Profits Eligible for Tax Exemption

In an interesting judgment, the Mumbai Tribunal has held that tax benefits are available in respect of the income arising from any activity which is directly or indirectly linked to “eligible activities” under section 10A of the Income Tax Act. Accordingly, it was held that the interest earned on fixed deposits which were made to obtain credit facility for funding the export business had a direct nexus with the business of the undertaking and therefore such interest is eligible for deduction under section 10A.

Source - Livingstones Jewellery Pvt Ltd Vs DCIT (2009) ITAT – Mumbai (ITA No 187/Mum/2007)

### 4. Fee for Conducting Workshops & Seminars Not “Fee for Included Services”

The Applicant, a medical college had entered into an agreement with Harvard Medical International, USA (‘HMI’) for transfer of knowledge and experience in medical sciences. The question before the AAR was to examine whether the activities of HMI qualify as ‘teaching by educational institutions’ and therefore outside the purview of “Fee for Included Services” as per article 12 of the Indo-US Tax Treaty. The AAR held that such activity can qualify as “teaching by educational institutions” only if there is participation of faculty from HMI and which benefits the participants who are pursuing medical courses in the Applicant’s institution. Also, the workshop organized by HMI should be substantially connected with the study curriculum of the medical college.

Source - Sri Ramachandra Educational and Health Trust, In re (2009) AAR (224 CTR 225)

## INDIRECT TAX

### 1. Specified Goods Imported from The Republic of Singapore exempted from Custom Duty

The Central Government has granted 100% exemption from Custom Duty for goods specified in Notification No. 74/2005 and exemption for duty in excess of 50% for goods specified in Notification No. 75/2005, if such goods are imported from the Republic of Singapore.

Source: Notification no. 69/2009-Customs, dated June 19, 2009

### 2. Cenvat Credit of Service Tax on Goods Transport Agency (‘GTA’) Service allowed

The Bangalore CESTAT (‘Tribunal’) has allowed the credit of service tax paid on GTA service used for transportation of final products, relying upon the judgment of the Supreme Court in the case of All India Federation of Tax Practitioners, wherein it was held that Service Tax and Excise Duty are consumption taxes to be borne by the consumer, therefore if the credit is denied on transportation services, such taxes will become a tax on the business. The Tribunal also observed that the meaning of expression ‘input services’ cannot change with the definition of the term ‘value’. Further, the Tribunal held that since in the instant case the ownership of the goods remained with the seller till the delivery of the goods, the seller bore the risk during the transit and freight charges formed part of the price of the goods, transport services for delivery of final products are to be treated as input services enabling the manufacturer to take credit of the service tax paid on such goods.

Source: ABB Ltd. vs. CCE & ST (Appeal No. ST/336/2007), CESTAT Bangalore

### 3. No Service Tax is leviable on free services carried out by Authorized Dealers pursuant to sale of new vehicles

Demand of Service Tax was raised on the assessee, an authorized dealer of a vehicle manufacturer, in respect of free services rendered for new vehicles purchased from the assessee. The assessee contended that no separate consideration was charged for first three services and that the sales tax on the margin earned on sale of vehicles had been paid. This was upheld by CESTAT, Chennai.

Source: Pillai & Sons Motor Co. vs Commissioner of Central Excise (CESTAT, Chennai)

## FEMA

### 1. Issue of Guarantees by banks

RBI clarified that Banks can provide guarantees on behalf of corporate entities in respect of Loans such as Non Convertible Debentures issued by such entities but excluding bonds and any other debt instrument.

Source: RBI/2008-2009/488 DBOD.No.DIR.BC.136/13.03.00/2008-09 May 29, 2009

## 2. Delays in Cheque Clearing

RBI has announced a new policy for Cheque Clearing issues whereby banks have been advised that credit and debit of local cheques should be given on the same day or with in an hour of commencement of business on the next working day of their presentation in clearing. Timeframe for collection of cheques drawn on state capitals is with in 7 days, for major cities it is 10 days and for other location it is 14 days.

Source: DPSS.CO. (CHD) No. 873 / 03.09.01/ 2008-09 November 24, 2008

## 3. NBFCs reporting compliances

RBI has announced that Non Banking Financial Companies ('NBFCs') with assets size of Rs. 1 billion and above and not accepting or holding public deposits are required to submit a Monthly Return to the Regional Office. RBI further added that once an NBFC reaches an asset size of Rs. 1 billion or above, it shall come under the regulatory requirement to comply with capital adequacy, credit concentration and disclosure norms along with reporting requirements.

Source: RBI/2008-09/491DNBS (PD) CC.No. 141/ 03.10.001/2008-09 June 4, 2009

## 4. RTGS Transactions

RBI has announced that the fund transfer in the mode of Real Time Gross Settlement ('RTGS') should be completed within the one hour and thirty minutes period, however if it fails to credit the account of beneficiary, the amount would be returned back to the account of the sender with in the given time.

Source: RBI/2008-09/499 DPSS (CO) RTGS No. 2246 / 04.04.002 / 2008 – 2009 June 16, 2009

## 5. Access to own credit report

RBI has directed banks to comply with the provisions of the Credit Information Companies (Regulation) Act, 2005 whereby any person, who applies for grant or sanction of credit facility, from any credit institution, may request such institution to furnish him a copy of the credit information obtained by such institution from the credit information company.

Source: RBI/2008-09/507 DBOD.No.DL.BC. 138/ 20.16.042/2008-09 June 24, 2009

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