

TECHNICAL UPDATE

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The amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Company Law & Accounting Standards, FEMA / EXIM Policy & SEBI related matters are summarized hereunder

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DIRECT TAX

1. Electronic Payment of Taxes can be made from Bank Account of Any Other Person

It has been clarified by the Central Board of Direct Taxes ('CBDT') that taxpayer who are mandatorily required to pay taxes through electronic mode, can make such payments from the bank account of any other person. However, such payment must clearly indicate the Permanent Account Number (PAN) of the taxpayer on whose behalf the payment is to be made.

Source - Circular No. 5 dated 14th July, 2008

2. Tax Return for Assessment Year 2008-09 must be Annexure Less

CBDT has clarified that no annexure are required to be attached with the Income tax returns (except ITR-7) for assessment year 2008-09. However, assessee are advised to retain all annexure relating to computation of income, TDS/TCS certificates, Challans for payment of taxes, audit reports and any other relevant documents, which may be require to produce before assessing officers for assessment purposes.

Source - Circular No. 6 dated 18th July, 2008

INDIRECT TAX

1 Anti-Dumping Duty Slapped On Colour TV picture tubes, Digital versatile discs porcelain tiles

The Government today slapped a steep anti-dumping duty on imported picture tubes for colour TV's from China, Malaysia, Thailand, and Korea and DVD-R and DVD-RW and tiles from China, Hong Kong, Chinese Taipei after it was found that these countries were dumping the product into India.

Source – Notification number 88/2008, 89/2008, 90/2008 – Customs, Dated July 26, 2008.

2 CBEC Notification - Conversion Rate w.e.f August 1, 2008

In supersession of the notification of the Government of India, Ministry of Finance the CBEC hereby determines that the rate of exchange for conversion purposes will be as mentioned in Schedule I and II of the notification annexed thereto for all currencies including Japanese Yen

Source - Notification number 98/2008-Customs, Dated July 28, 2008.

3 Excise Duty on Pan Masala manufactured by packing machines and packed in pouches

The Central Government hereby specifies that Pan Masala falling under tariff item 2106 90 20 of the First Schedule of the Central Excise Tariff Act except Pan Masala containing not more than 15% betel nut and gutkha falling under tariff item 2403 99 90 manufactured with the aid of packing machines and packed in pouches as notified goods on which excise duty will be levied and collected.

Source – Notification number 29/2008,-Excise, Dated July 1, 2008.

4 Service Tax –Provisional Attachment of Property Rules

As per the Provisional Attachment of Property Rules, 2008 if Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that it is necessary or expedient for the purpose of protecting the interest of revenue during the pendency of the proceeding under Section 73

and Section 73A of the Finance Act 1994, to attach provisionally any property belonging to a person to whom notice has been served after due verification of facts forward a proposal to the Commissioner of Central Excise.

Source – Notification number 30/2008,-Service Tax, Dated July 1, 2008.

CORPORATE & OTHER LAWS

1. Delisting to be made easier

The companies listed on multiple stock exchanges wishing to delist from one of them could do so easily by taking the approval of their board of directors once the new delisting norms are in place. Once the new norms are cleared, they may not need to go through the tedious process of getting shareholders approval. The Ministry of Finance and Ministry of Corporate Affairs are expected to hold a meeting soon to finalize the new guidelines.

Source: Economic Times July 14, 2008.

2. Petition for Oppression & Mismanagement in maintainable for Consulting Oppressive Acts

The petition for oppression and mismanagement was not maintainable as the alleged oppressive act was a past and concluded transaction. Relief under section 397 and 398 could be given only for 'continuing' oppressive acts.

Source: Jiwan Mehta vs Emmbros Metals (P) Ltd. and Ors.

3. Registration and Modification of Charges

Documents filed on the portal (www.mca.gov.in), on or after 6th July 2008 for registration/modification of the charge or for giving of intimation of payment or satisfaction thereof after a period thereof after a period of 60 days or 30 days respectively, shall not be registered by the concerned Registrar until the delay is condoned by the Hon'ble Company Law Board.

Source: Company Affairs General Circular No. 1 dated 1 July 2008

FEMA & OTHER LAW

1 Security for External Commercial Borrowings

Under the extant ECB guidelines, the choice of security to be provided to the overseas lender / supplier for securing ECB is left to the borrower. However,

creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to FEMA regulations, as amended from time to time.

As a measure of rationalisation of the existing procedures, it has been decided to allow AD Category - I banks to convey 'no objection' under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower.

Source: RBI Circular No. 01, dated July 11, 2008

2 Investment in unincorporated entities Overseas in Oil sector under the Automatic Route

Investments in unincorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd.(OVL) and Oil India Ltd.(OIL) may be permitted by AD Category - I Banks, without any limit, provided such investments are approved by the competent authority.

Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to 400 per cent of its net worth provided the proposal has been

approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment. Investment in excess of 400 per cent of the net worth of an Indian company shall require prior approval of the Reserve Bank.

Source: RBI Master Circular No. 01/2008-09 dated, July 1, 2008

3 Investments in Energy and Natural resources sector

Reserve Bank will consider applications for investment in JV/WOS overseas in the energy and natural resources sectors (e.g. oil, gas, coal and mineral ores) in excess of 400 per cent of the net worth of the Indian companies as on the date of the last audited balance sheet. Accordingly AD Category - I banks may forward such applications from their constituents to the Reserve Bank as per the laid down procedure.

Source: RBI Master Circular No. 01/2008-09 dated, July 1, 2008

4 Overseas investment by Registered Trust or Society

Registered Trusts and Societies engaged in manufacturing / educational sector are allowed make investment in the same sector(s) in a Joint Venture or Wholly Owned Subsidiary outside India, with the prior approval of the Reserve Bank. Trusts / Societies subject to the satisfaction of the eligibility criteria.

Source: RBI Master Circular No. 01/2008-09 dated, July 1, 2008

ASA & Associates

chartered accountants (formerly Ajay Sethi & Associates)

Head Office

K S House 118 Shahpur Jat
New Delhi 110 049 INDIA
Tel : +91 11 4100 9999
Fax : +91 11 4100 9990
Email : info@asa.in

Mumbai Office

B2 Manoj Premises
G D Ambekar Road Wadala
Mumbai 400 031 INDIA
Tel : +91 22 2410 4000
Telefax : +91 22 2410 6263
Email : info@cci.in

Bangalore Office

Akruti Antara Apartment
Flat 42, 11/1 Haudin Road
Bangalore 560 042 INDIA
Tel : +91 80 4151 0751
Fax : +91 80 4113 5109
Email : infobangalore@asa.in

www.asa.in

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