

# TECHNICAL UPDATE

April 2008

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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. Double Taxation Avoidance Agreement ('DTAA') with Myanmar

The Government of India, in order to avoid double taxation and for prevention of fiscal evasion with respect to taxes on income has signed a DTAA with the Government of Myanmar.

Source – PIB Press Release Dated April 3<sup>rd</sup>, 2008.

#### 2. Compulsory Quotation of PAN in TDS Returns

Quotation of PAN number in the TDS returns is made compulsory for returns of last quarter of financial year 2007-08 and onwards. A threshold limit has been prescribed for minimum PAN number in a TDS return, which is 95 percent for salary cases and 85 percent for non-salary cases, without which the returns would not be accepted.

Source – PIB Press Release Dated April 1<sup>st</sup>, 2008.

#### 3. TDS not to be Deducted on Service Tax Component on Rental Payments

It has been clarified by the Central Board of Direct Taxes ('CBDT') that tax withholding is required to be affected only on rental payments and not the service tax component charged on such rental. The circular has clarified that service tax is recovered by the landlord on behalf of the government and hence not an income in hands of the landlord.

Source – CBDT Circular No 4/2008 Dated April 28<sup>th</sup>, 2008.

## INDIRECT TAX

### 1. Refund of additional duty of Customs

The procedure for the refund of 4% additional duty of Customs has been laid out by the CBEC.

Source – Circular Number 6, Dated April 28, 2008.

### 2. Provision of Refund of Service Tax extended to new taxable services

Provision of refund of Service Tax has been extended to certain taxable services related to Customs House Agent, Banking and Finance and Commission Agent.

Source – Notification No. 17 – Dated April 1, 2008.

## CORPORATE & OTHER LAWS

### 1. Directors' responsibility in dishonour of cheques

Criminal proceedings for dishonour of Cheque issued by a company could be initiated against only those officials who had been in-charge of and responsible for the conduct of affairs of the said company at the relevant time. Consequently, a complaint against directors of a company for dishonour of cheque was quashed in absence of any averment within the complaint to the effect that the said director had been responsible for the conduct of the business of the company.

Source: Kapal Mehra vs Indusind Enterprises and Finance Ltd. and Anr.

### 2. SEBI amended Clause 49 of the Listing Agreement

SEBI amended Clause 49 of the Listing Agreement pertaining to corporate governance, by including certain mandatory provisions and non-mandatory provisions. Mandatory provisions, inter se included provisions related to the minimum age of an independent director to be 21 years, the gap between resignation / removal of an independent director and appointment of another independent director in his place should not exceed 180 days, etc.

SEBI, as a non-mandatory provision, advised Companies to ensure that the person who was being

appointed as an independent director had the requisite qualifications and experience which would be of use to the company and which, in the opinion of the company, would enable him to contribute effectively to the company in his capacity as an independent director.

Source: SEBI Circular No. CFD-DIL-CG-1-2008-08-04 dated 8 April 2008

### 3. Powers of provisional liquidator

A provisional liquidator had all the powers of an official liquidator and was authorised to take all necessary steps for protecting the interest of the company after the admission of the winding up petition by the company court. Further, a bonafide sale-deed executed by an ex-MD of a company to meet the expenses of a company prior to presentation of winding up petition could not be annulled.

Source: Shiv Shakti Builders and Financial Co. Ltd. (In Liquidation), In re

### 4. Right for petition for oppression and mismanagement ceases on transfer of shareholding

A petition against oppression and mismanagement within a company was not maintainable as the right to file such a petition had ceased to exist after the petitioners had legally transferred their entire shareholding for due consideration and the shareholders consenting to such transfer had subsequently withdrawn their consent to the said petition.

Source: Ranjit Singh and Ors. vs Madan Mohan Cold Storage (P) Ltd. and Ors.

## FEMA & OTHER LAW

### 1. Liberalization - Overseas Investment by Mutual Funds

With a view to increase overseas investment, Reserve Bank of India (RBI) has enhanced the aggregate ceiling for overseas investment by Mutual Funds registered with the Securities and Exchange Board of India from USD 5 billion to USD 7 billion.

Source: RBI/2007-2008/274 A. P. (DIR Series) Circular No. 34 dated April 03, 2008

## 2. Liberalized remittance scheme for resident individuals-Reporting

RBI has instructed AD Category - I banks to furnish information on the number of applications received and total amount remitted under the Liberalised Remittance Scheme, on a monthly basis as previously on a quarterly basis.

Source: RBI/2007-2008/277 A.P. (DIR Series) Circular No.36 dated April 04, 2008

## 3. Cut-off time for e-payment transactions pertaining to Government Revenue

RBI in consultation with the Controller General of Accounts, Ministry of Finance, Government of India

has decided that the cut-off time of 8.00 p.m. fixed for e-payment transactions would be applicable for all Government transactions including EASIEST and OLTAS.

Source: RBI/2007-08/275 DGBA.GAD.No.10577 / 42.01.038 /2007-08 dated April 03, 2008

## 4. DRI Scheme- Revision of the income limits

RBI has now revised the borrower's eligibility criteria for availing loan under the Differential Rate of Interest Scheme which is Rs.18000 (annual family income) in rural areas and Rs.24000 (annual family income) in urban areas.

Source: RBI/2007-2008/279 RPCD. SP. BC. No 55 / 09. 07. 01/ 2007-08 dated April 10, 2008

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