

# TECHNICAL UPDATE

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

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### DIRECT TAX

#### 1. Adjustment to Arms' Length Price ('ALP') for Marketing Intangibles

Maruti Suzuki India Limited ('Maruti'), an Indian company engaged in the business of manufacture and sale of automobiles, entered into a license agreement with Suzuki Motor Corporation ('Suzuki'). In terms of the agreement, Maruti was required to pay royalty to Suzuki for use of Suzuki's brand on the vehicles manufactured by it. The Transfer pricing Officer ('TPO') contended that replacement of Suzuki's logo with Maruti's own logo, symbolized sale of Maruti's logo to Suzuki. The TPO viewed Maruti's logo as superior to Suzuki's in the Indian market, and observed that Suzuki should have compensated Maruti for the same. The TPO further contended that Maruti had incurred relatively higher expenditure on advertisement, primarily to establish Suzuki's brand in India, and on this basis, disallowed 50% of royalty as well as excessive expenditure on advertisement.

Maruti preferred a writ before the Delhi High Court which held that the approach adopted by TPO was erroneous and issued the following directions to the TPO

- TPO to allow appropriate notice to Maruti to produce evidence in support of ALP
- Should the domestic entity uses brand name/logo owned by its Associated Enterprise ('AE'), no compensation is necessary provided usage of such brand is at discretion of such domestic entity
- Expenditure incurred on advertisement/promotion/marketing by a domestic entity on promoting the brand of its overseas AE should be in accordance with market norms. In case these are found excessive, such overseas AE must compensate the domestic entity

*Source Maruti Suzuki India Ltd. vs Addl CIT (W.P.(C) 6876/2008, Delhi High Court)*

## 2. Transactional Margins to be Used for the Purpose of TNMM

The Assessee, a partnership firm was engaged in the business of import and export of diamonds. During the year, the Assessee imported/exported diamonds to/from its foreign Associated Enterprises and also to independent entities. The Assessee contended that none of the methods prescribed under the Income Tax Act, 1961 ('the Act') for computing the Arm's Length Price ('ALP') were applicable to its kind of business. However, the Transfer Pricing Officer ('TPO') applied the Transactional Net Margin Method by using the enterprise level operating margins for computing the ALP and consequently proposed an adjustment. On appeal the tribunal ruled that the TPO erred in using the enterprise level margins and that the operating margins pertaining only to the international transactions ought to have been used by the TPO

*Source DCIT vs M/s Starlite (ITA No 2279, ITAT Mumbai)*

## 3. Exempt Income Taxable Under MAT

The Assessee Company sold certain assets to its wholly owned company and credited the transactional profit to the profit & loss account. The said profits were exempt from capital gains tax by virtue of provisions of section 47(iv) of the Act. The Assessee Company contended that since the gains were exempt from capital gains tax, they were also to be excluded from book profits while computing the Minimum Alternate Tax ('MAT') under section 115JB of the Act, which was not accepted by the revenue authorities. On appeal, the tribunal observed that the book profits are to be computed on the basis of profit & loss account drawn in accordance with schedule VI of the Companies Act, 1956 and such profits can only be altered to the extent required by explanation to section 115JB. The tribunal further observed that the profit & loss account of the Assessee Company has been drawn in accordance with schedule VI. Thus, capital gains are to be included in book profits while computing MAT, even if they are exempt under normal provisions of the Act.

*Source Rain Commodities Ltd vs DCIT (ITA Nos. 673/Hyd/2009)*

## 4. Existence of PE Does Not Necessarily Lead to Accrual of Royalty in India

The Assessee Company, a tax resident of Singapore, having a Permanent Establishment ('PE') in India

entered into an agreement with Global Cricket Corporation, Singapore ('GCC') for acquiring telecast rights of sports events in India. The revenue authorities contended that payments made by the Assessee Company to GCC in consideration for granting such rights constitutes royalty income in the hands of GCC and since the Assessee Company had a PE in India, the accrual of such income also took place in India. The Assessee Company argued that in terms of Article 12(7) of the Double Taxation Avoidance Agreement ('DTAA') between India and Singapore, this royalty does not accrue in India since it is neither connected nor borne by the PE in India. The tribunal concurred with the Assessee Company and held that such payment does not accrue or arise in India.

*Source SET Satellite Pte Ltd Vs DDIT (ITA Nos. 2691/MUM/2009, ITAT Mumbai)*

## INDIRECT TAX

### 1. Amendments in Cenvat Credit Rules, 2004

Cenvat Credit (Third Amendment) Rules 2010 prescribes that Cenvat Credit shall not be utilised for payment of Clean Energy Cess.

Cenvat Credit (Fourth Amendment) Rules 2010 state that excisable goods removed without payment of duty for use in diplomatic missions or consular offices will be considered as "deemed exports".

*Source: Notification No. 26/2010, Central Excise (N.T.), dated June 29, 2010 Notification No. 27/2010, Central Excise (N.T.), dated July 1, 2010*

### 2. Refund of Additional Duty of Customs (CVD)

Central Board of Excise and Customs (CBEC) has further simplified the process of claiming the 4% CVD refund. The new guidelines allow full refund on submission of prescribed documentation. Moreover, the importer has to make a self declaration that the CVD has not been passed on to the buyer or any other person. The Board has further clarified that refunds will be granted within 30 days of application.

*Source: Circular No. 18/2010 – Customs, dated July 8, 2010*

### 3. Abatement in taxable value of services provided within port/airport

Taxable value of services performed within the airport/port premises by a service provider will be

subject to abatement of 75% for the purpose of computing service tax.

Source: Notification No. 43/2010, Service Tax, dated June 30, 2010

#### 4. Extension of time for submission of DVAT 51

Time limit for furnishing return of income in Form DVAT 51 and for furnishing the declaration forms for the financial year 2009-10 has been extended till August 31, 2010.

Source: Order No. F.3 (33)/P-II/VAT/Misc./2006/1541-51, dated July 20, 2010

## FEMA

### 1. Liberalization in Repatriation of exports proceeds

Reserve Bank of India ('RBI') has increased the period of realization and repatriation of the amount representing the full export value of goods or software exported from 6 months to 12 months from the date of export, subject to review after one year. The relaxation has been extended up to March 31, 2011.

Source: RBI/2009-10/513 A.P. (DIR Series) Circular No.57 dated June 29, 2010

### 2. LAF – Repo and Reverse Repo Rates

RBI has decided to raise the repo rate under Liquidity Adjustment Facility ('LAF') by 25 basis points from 5.25 percent to 5.50 percent and the reverse repo rates under the LAF by 25 basis points from 3.75

percent to 4.00 percent with immediate effect.

Source: RBI/2010-2011/107 FMD.MOAG. No. 45/01.01.01/2010-11 dated July 02, 2010

### 3. ECB Policy – Take Out Finance

RBI has reviewed the existing ECB policy for refinancing of domestic Rupee loans with ECB and has decided to place a scheme of take-out finance permitting the Infrastructure sector, under approval route for new projects in sea port, airport and roads subject to the prescribed conditions. All eligible borrowers may apply to RBI for necessary approval before entering into take out finance arrangement.

Source: RBI/2010-11/124 A.P.(DIR Series) Circular No.04 dated July 22, 2010

### 4. Master Circulars Issue for FY 2010-11

RBI has come out with the Updated Master Circulars for the Financial Year 2010-11 for the following matters:

- (i) Establishment of Liaison / Branch/ Project Offices in India by Foreign Entities
- (ii) Acquisition & Transfer of Immovable Property in India by Non Residents
- (iii) Foreign Investment in India
- (iv) ECB and Trade Credits
- (v) Direct Investments by Residents in Joint Venture / Wholly Owned Subsidiary Abroad.

Source: RBI/2010-11/11 Master Circular No.11/2010-11 dated July 01, 2010

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