

# 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. Deduction of Tax at Source

Once an employer has deducted tax at source, employee assessee cannot be held responsible for payment of tax again. It is the duty of the assessing authority to ensure that the amount of tax was recovered from the employer of the assessee.

Source - Pranab Kumar Chakraborty Vs Deputy Commissioner of Income-tax – (2008) ITAT (Appeal no. 8308 of 2004)

#### 2. Applicability of Deemed Dividend on payment to directors

Where imprest was given to the director of the company for the purpose of business of the company it could not be taxed as deemed dividend in the hands of the director. The Tribunal held that where there was documentary evidence on record to substantiate that the amount was given for the business purposes of the company, the same could not be considered to be deemed dividend in the hands of the assessee and the provisions of section 2(22)(e) will not be applicable

Source - Sunil Sethi Vs Deputy Commissioner of Income-tax - (2008) ITAT (Appeal no. 2131 of 2007)

#### 3. Applicability of section 194J on transaction fee paid to Stock Exchange

Where the assessee was engaged in the business of share broking and depository services and had paid certain sum as transaction charges to various stock exchanges, it was held that such payments are made in consideration for the use of facilities provided by the stock exchange and is not paid in consideration of any technical services rendered by the exchange.

Therefore, Section 194J dealing with TDS on 'Fee for Professional or Technical Services' is not applicable on such transactions.

Source - Kotak Securities Ltd. Vs Additional Commissioner of Income-tax - (2008) ITAT (Appeal no. 1955 of 2008)

## INDIRECT TAX

### 1. Increase in time limit for filing claim for refund of service tax by exporters

The time limit for filing claim for refund of service tax, by exporter of goods has been increased from sixty days to six months. Exporter of goods who have paid service tax on services received by them and used for export of goods are eligible for such refund.

Source - Notification No. 32/2008

### 2. e - Payment of Central Excise Duty and Service Tax

Large taxpayers shall pay the central excise and service tax dues electronically only, through internet banking. However, in case of difficulties in e-payment, a large taxpayer may pay the duty through banks in the jurisdiction of the LTU Commissioner only.

Source - Circular No. 878/2008

## CORPORATE & OTHER LAWS

### 1. Issuance of Electronic Contract Notes (ECNs) in Equity Derivative Segment

In consultation with the exchanges, it has now been decided to extend the facility of issuance of ECNs as a legal document using Straight Through Processing (STP) to the equity derivatives segment also.

The Exchanges are advised to modify/amend their bye-laws, rules and regulations to;

- Permit issuance of electronic contract note including all the standard pre-printed terms and conditions as given in the physical contract note.
- Permit signing of the electronic contract note with a digital signature so as to make the modified format of the electronic contract note a valid legal document like the physical contract note.
- Prescribe a standard format for the issuance of the electronic contract note.

The standard terms of contract as are required to be mentioned in the Contract Notes as per the Bye-laws and Regulations of exchanges, which are not contained in ECNs, shall be incorporated in the Client Broker Agreement or where applicable, the Tripartite Agreement between the stock broker, sub-broker and the client.

Source : SEBI Circular No. DNPD-143542-43-08 dated 6 November 2008

### 2. Central Government makes rules to amend the Companies (Central Government's) General Rules & Forms, 1956

As per Companies (Central Government's) General Rules & Forms, 1956 Certain Forms have been amended w.e.f. December 7, 2008

- Form 1B - Application for approval of the Central Government for change of name or conversion of a public company into a private company
- Form 4 - Statement of amount and rate percentage of the commission payable in respect of shares or debentures and the no. of shares or debentures for which persons have agreed for a commission to subscribe for absolutely or conditionally.
- Form 4C - Return in respect of buy back of securities
- Form 18 - Notice of situation or change of situation of registered office
- Form 22 - Statutory Report
- Form 32 - Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares

Source: Government of India, Ministry of Corporate Affairs

## FEMA

### 1. Introduction of Insurance (Amendment) Bill 2008

In a meeting held on October 31, 2008 Union Cabinet has given its approval for the introduction of the Insurance (Amendment) Bill, 2008 with a view to increase the upper cap of foreign direct investment from the current 26 per cent to 49 per cent.

Source: PIB Release dated October 31, 2008

## 2. Trade Credits for Imports into India – Review of all-in-cost ceiling

RBI has revised the all-in cost ceiling for trade credit having maturity period up to three year to 200 basis points as the domestic importers are experiencing difficulties in raising trade credits due to the tight liquidity conditions in the international credit markets.

Source: RBI/2008-09/ 251 A. P. (DIR Series) Circular No. 27 dated October 27, 2008

## 3. Interest Rates on NRE Deposits

RBI has decided that the interest rates on deposits held in Non-Resident (External) Rupee (NRE) Accounts for one to three years maturity should not exceed the LIBOR / SWAP rates plus 175 basis points, as on the last working day of the previous month, for US dollar of corresponding maturities. The interest rates as determined above for three year deposits will also be applicable in case the maturity period exceeds three years.

Source: RBI/2008-09 / 292 RPCD.CO.RRB.BC.No.63 / 03.05.33 (C) /2008-09 dated November 17, 2008

## 4. Interest Rates on FCNR (B) Deposits

RBI has decided that the Interest rates on FCNR (B) deposits of all maturities shall be paid within the ceiling rate of LIBOR / SWAP rates plus 100 basis points for the respective currency/corresponding maturities. On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency / maturity plus 100 basis points and the interest reset period shall be six months.

Source: RBI/2008-09 / 292 RPCD.CO.RRB.BC.No.63 / 03.05.33 (C) /2008-09 dated November 17, 2008

## 5. Special Refinance Facility

RBI has vide the Reserve Bank of India Act, 1934 provided a facility to all scheduled commercial banks (excluding RRBs) known as Special Refinance Facility by which they would be provided refinance from the Reserve Bank equivalent up to 1.0 per cent of each bank's net demand and time liabilities at the repo rate under the liquidity adjustment facility (LAF) up to a maximum period of 90 days.

Source: RBI/2008-09/295 Ref.No.MPD.BC. 311 /02.01.009/ 2008-09 dated November 18, 2008

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