

# 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 & Securities Exchange Board of India related matters are summarized hereunder

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### DIRECT TAX

#### 1. Taxability of Income Arising from International Long Distance Services

The applicant has entered into an agreement with its group company for providing end to end international long distance telecommunication services to its Indian customers. Under the agreement the foreign company would carry the calls and data to the recipients outside India using its infrastructure & equipments outside India. The question before the AAR was to examine whether the service provided by foreign company qualifies as fee for

technical services ('FTS') or royalty and therefore will be taxable in India as per Article 13 of the Indo-UK Tax Treaty. The AAR held that the foreign company has neither rendered any managerial, technical or consultancy services nor provided any secret process to the applicant. Hence, the services cannot be covered within the meaning of FTS or Royalty and fee paid for such services will not be taxable in India.

*Source – Cable and Wireless Networks India (P) Ltd Vs DIT (2009)*

*Authority for Advance Rulings (AAR No 786 of 2008)*

## 2. Taxability of Capital Gains on Transfer of Listed Securities

The applicant, a foreign company, has transferred shares of Indian company listed on recognized stock exchange and seeks advance ruling on the applicability of lower rate of capital gains tax. Following its earlier judgments, AAR held that foreign companies may also opt for a lower rate of capital gains tax @ 10 percent on sale of listed securities which is available only when indexed cost of acquisition were not taken. AAR also held that the benefit of lower rate of capital gains tax cannot be denied to non-resident foreign companies on the ground that they are not eligible for the indexation of acquisition cost.

*Source – Cable and Wireless Networks India (P) Ltd Vs DIT (2009)*

*Authority for Advance Rulings (AAR No 786 of 2008)*

## 3. Taxability of Subscription Fee received by Foreign Companies

The applicant, a US Company, entered into Master Client License Agreements with Indian customers under which it grants limited, non-exclusive, non-transferable rights to use its database, software tools and charges an annual subscription fee. The database contains financial information and other publicly available data. The question before the AAR was to examine whether the payment of subscription charges to access such databases would be characterized as royalty income and would consequently trigger a tax liability in India. The AAR held that the copyright in such database is not transferred or licensed to the subscribers and they were only granted the right to view the information or access the database. Thus, subscribers were granted a right to use the copyrighted database and not the copyright in the database. Hence, the subscription fee cannot be characterised as royalty and not be subject to tax in India.

*Source – FactSet Research Systems Inc Vs DIT (2009) Authority for Advance Rulings (AAR No 787 of 2008)*

## INDIRECT TAX

### 1. Services Rendered in Relation to Repairs or Maintenance of Roads Exempted from Service Tax

CBEC has exempted the services rendered in relation to management, repairs or maintenance of roads from the levy of service tax.

*Source: Notification no. 24/2009-Service Tax, dated July 27, 2009*

### 2. Specified Services Rendered by Tour Operators Exempted from Service Tax

CBEC has exempted the services rendered by a tour operator who is having a contract carriage permit for inter or intra state transportation of passengers (excluding tourism) and services of charter or hire from the levy of service tax

*Source: Notification no. 20/2009-Service Tax, dated July 7, 2009*

### 3. Interbank Transactions of Sale and Purchase of Foreign Currency Exempted from Service Tax

Transactions of sale and purchase of foreign currency between scheduled banks has been exempted by the CBEC from the levy of service tax

*Source: Notification no. 19/2009-Service Tax, dated July 7, 2009*

### 4. Specified Services Received by Exporter of Goods Exempted from Service Tax

CBEC has exempted from service tax, the services which are provided to an exporter of goods by a goods transport agency for transport of goods by road, if such services are used for export of goods. The services provided by commission agent located outside India to an exporter, assisting the exporter in making sales of goods have also been exempted. The procedural requirements for claiming the exemption have also been notified.

*Source: Notification No. 18/2009-Service tax, dated July 7, 2009.*

### 1. Clarification regarding status of a holder of a Global Depository Receipts (GDRs)

A question has arisen whether a non-resident holder of GDR is a member of the issuing company within the meaning of section 41 & 42 of the Companies Act, 1956 It is hereby clarify that

- (a) As per section 41(1) & (2) of the Companies Act, a person is member of the company, (i) who is a

subscriber to the Memorandum or (ii) whose name has been entered in the register of members. Since, holder of GDR is neither the subscriber to the Memorandum nor a holder of the shares, his name cannot be entered in the Register of Members. Therefore, a holder of GDR cannot be called a member of the company.

- (b) As per section 41(3) of the Companies Act, 1956, a person holding a share capital of the company and whose name is entered as beneficial owner in the records of the depository, is deemed to be a member of the Company. Since the Overseas Depository Bank as referred in the 'Scheme' is neither the Depository as defined in the Companies Act, 1956 and the Depository Act, 1996 nor holding the shares capital, therefore, it cannot be to be a member of the company.
- (c) A holder of GDR may become a member of the company only on transfer/redemption of the GDR into underlying equity shares after following the procedure provided in the "Scheme"/provisions of the Companies Act, 1956.
- (d) Since the underlying shares are allotted in the name of Overseas Depository Bank, the name of such Overseas Depository Bank is to be entered in the 'Register of Member' of the issuing company.
- (e) However, until transfer/redemption of such GDRs into underlying shares, Overseas Depository Bank cannot be considered a nominee of the holder of GDR for the purpose of section 42 read with section 41 of the Companies Act, 1956.

*Source: Ministry of Corporate Affairs/Circular No. 1/2009*

## 2. Revision in Annual Filing Forms & Form 1A, 21A, DIN 3 & 14 (LLP).

Ministry of Corporate Affairs has revised the following e-forms w.e.f July 19, 2009. These are:

- E-Form 1A for application of name availability
- E-Form 20B for annual return of companies having share capital
- E-form 21A for annual return of companies not having share capital
- E-Form 23AC for Balance Sheet
- E-Form 23ACA for Profit and Loss Account

- E-Form 23B for Auditor's appointment
- E-Form 66 for Compliance Certificate
- E-Form Din-3 and 14 (LLP)

*Source: Ministry of Corporate Affairs*

## 3. Amendment in E-forms

E-Forms 8, 10, 17 and 61 for the purpose of:

- creation & modification of Charge
- registration of charge for debenture
- satisfaction of charge
- filing an application with Registrar of Companies

*Source: Ministry of Corporate Affairs/ Notification G.S.R 284(E) dated 24-04-09*

## 1. Export of Goods and Software, Realization and Repatriation of export Proceeds - Liberalization

RBI has enhanced the period of realization and repatriation of the amount representing the full export value of goods or software exported, for a further period of one year up to June 30, 2010.

*Source: RBI/2009-10/104 A.P. (DIR Series) Circular No.04 dated July 21, 2009*

## 2. External Commercial Borrowings (ECB) Policy, revised

As per the revised ECB policy of RBI, Special Economic Zones developers will have to avail of ECB under the Approval route for providing infrastructure facilities within the SEZ. However, ECB shall not be permissible for development of integrated township and commercial real estate within the SEZ.

*Source: RBI/2008-09/517 A.P. (DIR Series) Circular No.71 dated June 30, 2009*

## 3. Reconciliation of transactions at ATMs failure - Time limit

RBI has issued directions to banks to streamline procedures for reimbursements to customers in case of faulty ATM transactions. As per new guidelines, it is mandatory for banks to reimburse customers the amount wrongfully debited on account of failed ATM transactions, within 12 working days from the date of receipt of the customer complaint, on failing of which banks have to pay a compensation of Rs. 100/- per day to the aggrieved customer.

*Source: RBI/2009-2010/100 DPSS No.101/02.10.02/2009-2010 dated July 17, 2009*

#### 4. Ready Forward Contracts for unlisted companies

RBI has been decided to permit unlisted companies who have been issued special securities by the Government of India and having gilt accounts with scheduled commercial banks to enter into ready forward contracts, subject to certain conditions and restrictions.

*Source: RBI/2009-10/102 IDMD.DOD.No. 334/ 11.08.36/ 2009-10 dated July 20, 2009*

#### 5. Master Circular on External Commercial Borrowings and Trade Credits

RBI has notified the regulatory framework of reporting arrangements and dissemination of information, conversion, crystallisation, structured obligations and all in cost ceiling for ECB. Further reporting arrangements, guarantee, amounts and maturity for trade credits for imports in India, also notified

*Source: RBI/2009-10/27 Master Circular No. 07/2009-10 dated July 1, 2009*

#### 6. Master Circular on Direct Investment by Residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) Abroad

Direct Investments outside India by both automatic and approval route including overseas investment by registered trust and societies, investment in energy and natural resource sector and investment in foreign securities, notified. In addition, Operational Instruction to Authorised Dealer Banks has also been issued.

*RBI/2009-10/21 Master Circular No. 01/2009-10 dated July 1, 2009*

#### 7. Master Circular on Foreign Investment in India

RBI has notified the regulatory framework for foreign investment in India, foreign portfolio investment, foreign venture capital Investments and other foreign investments in India including acquisition and transfer of immovable property in India and investment in partnership firms. Guidelines for establishment of liaison office/ branch office/ project office in India have also been notified.

*Source: RBI/2009-10/22 Master Circular No.2/2009-10 dated July 01, 2009*

#### 8. Master Circular on Import of Goods and Services

RBI has notified the general and operational guidelines for imports including licenses, time limit for settlement, import of foreign exchange, advance remittance for import of services, remittances against replace imports etc. Regulations for import of assets such as Platinum, Gold, Diamonds, Rhodium and Silver have also been notified.

*Source: RBI/2009-2010/28 Master Circular No. 08/2009-10 dated July 1, 2009*

#### 9. Master Circular on Export of Goods and Services

RBI has notified general and operational guidelines for export of goods and services including relisation and repatriation of export proceeds, consignments exports, counter trade arrangement, refund of export proceeds etc.

*RBI/2009-10/29 Master Circular No. 09/2009-10 dated July 1, 2009*

## ASA & Associates

chartered accountants

#### 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](mailto:info@asa.in)

#### Mumbai Office

Navbharat Estate 'East Wing' 2nd Floor  
Zakaria Bunder Road Sewri (W)  
Mumbai 400 015 INDIA  
Tel : +91 22 2410 4000  
Telefax : +91 22 2410 6263  
Email : [infomumbai@asa.in](mailto:infomumbai@asa.in)

[www.asa.in](http://www.asa.in)

#### Bangalore Office

A-2 Ground Floor  
Akruti Antara Apartment  
No 11/1 Haudin Road  
Bangalore 560 042 INDIA  
Tel : +91 80 4151 0751  
Fax : +91 80 4113 5109  
Email : [infobangalore@asa.in](mailto:infobangalore@asa.in)