

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

The Government of India, in order to avoid double taxation and for prevention of fiscal evasion with respect to taxes on income, signed a Double Taxation Avoidance Agreement (DTAA) with the Government of Luxemburg.

Source – PIB Press Release Dated June 2nd, 2008

2. No Capital Gains on Transfer of Shares at Cost Price i.e. Below Market Price

Mumbai Income tax appellate tribunal recently held that there will be no capital gains in a bonafide transfer of shares at cost price i.e. below the market price. Tribunal held that the difference between the cost price and the prevailing market price cannot be construed as capital gains, if the shares were transferred at the cost price.

Source – Rupee Finance and Management (P) Ltd. Vs ACIT – 2008 (22 SOT 174) – ITAT (Mumbai)

3. Liaison Office Working as Procurement Agency of Foreign Principals cannot be Taxed in India

Bangalore Income tax appellate tribunal recently held that activities of an Indian liaison office of a non-resident cannot be concluded as business connection of that non-resident in India, if it had been working as agent of foreign affiliates for ensuring proper procurement of goods. Tribunal held that so long as the purchase is for the purpose of exports, the activity would be excluded from the gamut of business connection and hence no income will accrue or arise in India.

Source – NIKE Inc. Vs ACIT - ITAT (Bangalore)

4. Revision of Double Taxation Avoidance Agreement ('DTAA') with Syria

The Government of India has revised the Double Taxation Avoidance Agreement between India and Syria entered on 25th June 1985.

Source – PIB Press Release Dated June 18th, 2008

5. Applicability of Double Taxation Avoidance Agreement ('DTAA') with Botswana

The Government of India has notified that all the provisions of DTAA with Botswana will be effective from 1st April 2009. The DTAA has been signed on 8th December, 2006.

Source – Notification No 70 dated June 18th, 2008

INDIRECT TAX

1. Appointment of various officers as Central Excise Officers

The CBEC has appointed various officers of Directorate General of Audit, Customs and Central Excise as Central Excise Officers. The audit of multi locational units were revamped whereby the zonal ADG(Audit) has been authorised to obtain the consolidated balance sheet, Profit and Loss Account and other financial documents from the Head or Corporate Office for scrutiny.

Source – Central Excise Circular No. 872-10-2008-CX, Dated June 17, 2008.

2. Special Economic Zones –Approval Committee

The Central Government constituted and approval committee consisting of a chairperson and other members to enable DLF Commercial Developers Limited to set up a sector specific Special Economic Zone (SEZ) for information technology and information technology enabled services in the state of Gujarat

Source - EXIM Notification No.S.O.1407 (E) Dated June 9, 2008.

CORPORATE & OTHER LAWS

1. SEBI (Foreign Institutional Investors) Regulations 1995 amended

SEBI (Foreign Institutional Investors) (Amendment) Regulations 2008 further amended SEBI (Foreign Institutional Investors) Regulations 1995. The salient features of the amendments include:

- (i) Modification of the Application Forms for grant of registration as a FII and Sub Account – so that the process of registration can be streamlined,
- (ii) Widening the type of securities in which FIIs were permitted to invest –with a view to include schemes floated by a Collective Investment Scheme; and
- (iii) Making eligible -an asset management company, investment manager or advisor or an institutional portfolio manager set up and/or owned by NRIs so that they can be registered as FII, subject to the condition that they would not invest their proprietary funds.

Source : SEBI Notification F.No. LAD-NRO-GN-2008-10-126204 dated 22 May 2008

2. Allotment of Shares in Compliance with Articles of Association

Allotment of new shares in private company to an outsider without offering them to the existing members was manifestly illegal and void per se. Therefore, the High Court dismissed an appeal as

the CLB was justified in directing cancellation of 1,479 shares transferred to the appellant by the second respondent out of 4,490 shares which was illegally allotted to him as it violated the provisions of Articles of Association of the respondent-company.

Source: Sanjay Bathija vs Prashant Properties and Investment (P) Ltd.

3. Central Government has constituted a National Advisory Committee

The Central Government constituted an Advisory Committee to be called the National Advisory Committee on Accounting Standards, consisting of the specified persons to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the Companies Act 1956.

Source : Company Affairs Notification S.O.1270(E) dated 30 May 2008

FEMA

1. ECB Policy: Liberalisation

RBI has decided to increase the External Commercial Borrowing limits for borrowers in the infrastructure sector up to USD 100 million for Rupee expenditure for permissible end-uses under the Approval Route and for others the existing limit has been enhanced to USD 50 million.

Source: RBI/2007-2008/339 A.P. (DIR Series) Circular no.43 dated May 29, 2008

2. Reporting under FDI Scheme - Revised procedure

RBI has revised the standard format for Form FCGPR and has prescribed a standard format for reporting of the receipt of the amount of consideration for issue of shares / convertible debenture. Both the FCGPR and the report evidencing receipt of the amount of consideration for issue of shares has to be filed through the AD Category-I Bank along with the KYC report The date for the filing of Part B of form FCGPR has been extended to July 31.

Source: RBI/2007-2008/342 A.P. (DIR Series) Circular no.44 dated May 30, 2008

3. ECB by Services Sector –Liberalization

RBI has decided to allow entities in the service sector viz. hotels, hospitals and software companies to avail External Commercial Borrowing up to USD 100 million, per financial year, for the purpose of import of capital goods under the Approval Route.

Source: RBI/2007-2008/346A.P. (DIR Series) Circular no.46 dated June 02, 2008

4. Export of Goods and Services- Realisation and Repatriation of Export Proceeds-Liberalisation

RBI has enhanced the period of realization and repatriation to India of the amount representing the full export value of goods or software exported to twelve months from the date of export.

Source: RBI/2007-2008/354 A.P.(DIR Series)Circular no.50 dated June 03,2008

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

138A Shaheed Bhagat Singh Colony
JB Nagar Andheri (E)
Mumbai 400 059 INDIA
Tel : +91 22 2831 4596
Telefax : +91 22 2825 6265
Email : infomumbai@asa.in

Bangalore Office

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