

TECHNICAL UPDATE

February 2008

Volume II/2008/ASA

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. Change in slab rates for individuals

The slab of tax rates has been amended. The new tax slab is as follows:

FROM		TO	
Income Range (Rs)	Rate (%)	Income Range (Rs)	Rate (%)
Upto 110,000	Nil	Upto 150,000 ¹	Nil
110,001 – 150,000	10	150,001 – 300,000	10
150,001 – 250,000	20	300,001 – 500,000	20
250,001 and above	30	500,001 and above	30

¹Exemption limit for women and senior citizens enhanced from Rs 145,000 and Rs 195,000 to Rs 180,000 and Rs 225,000 respectively.

2. Preliminary Expenses

Certain expenses towards further expansion by service companies are now deductible as preliminary expenses over five consecutive years.

3. Dividend received from nations having Double Taxation Avoidance Agreement ('DTAA') with India not taxable

Dividend income received from a foreign company is not taxable when there is a DTAA with the country where such company is based in. In the case of Torquoise Investment and Finance Ltd., it was held that dividend income would be taxed only in the country where such income accrued.

4. Capital Gain on Reverse Mortgage Scheme

Capital assets transferred under reverse mortgage scheme will not be treated as transfer and therefore will not be liable to Capital Gains tax.

5. Capital Gain on Foreign Currency Exchangeable Bonds (FCEB)

In case FCEB's are converted to shares or debenture, such a conversion shall not be treated as transfer and therefore will not be liable to Capital Gains tax.

6. Double Taxation Avoidance Agreement ('DTAA') with Luxembourg cleared

The Cabinet Committee on Economic Affairs ('CCEA') approved the DTAA with the Grand Duchy of Luxembourg. India has so far signed and notified such bilateral treaties with 71 other countries.

7. New Zero Coupon Bonds notified

National Housing Bank ('NHB') has been permitted to issue thirty lakh zero coupon bonds before end-March 2009 with specific tax benefits for both the issuer and investors. Each bond would have a 10-year life period and a maturity or redemption value of Rs 10,000. The discount would be decided by NHB at the time of issuing the bonds.

INDIRECT TAX

1. Anti Dumping Duty on import of Phenol from USA, Taiwan and Korea RP

If phenol is imported from the above countries then they will be subject to anti dumping duty and such duty will have to be paid in Indian Currency

Source – Notification No. 14/5/2006 DGAD; Dated Mar 3, 2008.

2. Amendment in Excise Return

The Central Government further amended 'Central Excise Notification No. 23 dated 12 October 2006 (N.T.)', whereby, new columns depicting the opening and closing balances in respect of monthly return

for production and removal of goods and other relevant particulars along with CENVAT credit were inserted in Form E.R-1 and Form E.R-3.

Source – Notification No. 15 – Dated March 1, 2008.

SERVICE TAX

1. Exemption on services provided by person having permanent address outside India in relation to taxable service provided to a hotel in India

Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a person, having his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, and which is received by a hotel located in India, in relation to booking of an accommodation in the said hotel, for a customer, who has his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, from the whole of the service tax leviable thereon under section 66 read with section 66A of the Finance Act.

Source – Notification No. 14 – Dated March 1, 2008.

CORPORATE & OTHER LAWS

1. FIIs investment in Government securities- limit enhanced

SEBI further enhanced the existing limit of USD 2.60 billion available for investment by FIIs in Government Securities or T-Bills to US \$3.2 billion. Further, investments by FIIs/ Sub Accounts in debt oriented mutual fund units (including units of money market and liquid funds) would be considered as corporate debt investments and reckoned within the stipulated limit of US \$1.5 billion, earmarked for FII/ Sub Account investments in corporate debt.

Source: SEBI Circular No. IMD-FII and C-27-2008 dated 31 January 2008

2. Draft of Designs (Amendment) Rules 2007 issued

The Central government issued a draft of Designs (Amendment) Rules 2007 to further amend the Designs Rules 2001. It iterated that comments on these draft rules had to be sent with thirty days of its publication in the Official Gazette.

Source: Industrial Policy Notification No. S.O.137 (E) dated 23 January 2008

3. Petitions can be entertained only in the Court of competent jurisdiction

The petitioner's claim -that only the court at Gurgaon had valid jurisdiction to adjudicate the matter, could not be entertained, since in view of the arbitration agreement between the parties, it was evident that the court at Chandigarh had the requisite consensual jurisdiction.

Consequently, the petition was rightly ordered to be returned for presentation in the court of competent jurisdiction.

Source: Hazari Lal vs Haryana Khadi and Village Industries Board and Anr.

4. Central Government empowered to condonation delay in filing with ROC.

A government company could approach the Central Government for condonation of delay in filing necessary documents with the Registrar of Companies if no statutory auditor had been appointed to look in to the affairs of the said company.

Source: Assam Syntex Ltd. and Anr. vs ROC and Anr.

5. Company Law Board (CLB) can regulate the affairs of the company in certain circumstances

The directors of a company were expected to work in fiduciary capacity for the best interests of the company failing which there was no chance for the

company to continue as a going concern. Consequently, a petition against complete mismanagement of affairs within a company was admitted on account of complete deadlock between the directors and the fact that the CLB was empowered to take both preventive and curative action to regulate the affairs of the company.

Source: Heena Dutt vs Chavi Designs (P) Ltd. and Anr.

6. No transfer of shares without Board approval

The CLB set aside the transfer of shares affected by the company without the prior written approval of the Board of Directors since such approval was mandatorily required as per the Articles of Association of the said company.

Source: V Ramesh Kumar and Ors. vs Milka Industries (P) Ltd.

FEMA

7. Opening and maintenance of Rupee/Foreign Currency Vostro Accounts of Non Resident Exchange Houses

The Reserve Bank of India ('RBI') has modified the guidelines in respect of opening of Vostro accounts of non resident exchange houses. The guidelines provide for prior approval of RBI for opening and maintaining rupee/Foreign currency Vostro account.

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