

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. Mandatory electronic payment of taxes for corporate assessee

Electronic payment of taxes, which so far was optional, has been made mandatory from April 1, 2008. Corporate assesses and all assesses, other than corporate, to whom provisions of Section 44AB of the Income Tax Act are applicable, are required to pay taxes through internet banking facility offered by authorized banks or through internet by way of credit or debit cards.

Source: Press release No. 402/92/2006-MC (05 of 2008), Dt. 23-1-2008,

2. Fringe Benefit Tax ('FBT') widened to include equity shares of foreign companies allotted to employees of Indian subsidiary through ESOP

Rule 40C of Income Tax Rules, 1962 prescribes guidelines for valuation of specified security or sweat equity shares, being an equity share, in the company for the purpose of Fringe Benefit Tax on ESOP. Rule 40C has been amended to omit the definition of "equity share" given therein, thereby allowing it to take its general meaning. Consequently, equity shares for this purpose will also include equity shares issued by foreign company.

Source: Notification No. 11/2008/E.No.142/25/2007-TPL

3. Provision for doubtful debts and provision for damaged stocks are not required to be added back to net profit for the purpose of Minimum Alternate Tax

The amount or amounts set aside to provisions made for meeting liabilities, other than the ascertained liabilities, are required to be added back to profit while computing book profit for the purpose of MAT. It was held that provision for doubtful debts and provision for damaged stock are related to the assets and not any liabilities. Therefore, there is no question of these amounts representing any unascertained liability.

Source: CIT vs E I Dupont India Ltd. (ITA No. 599 of 2007)

4. Pre-operative expenditure on new venture, managed from common funds and under common management control, is revenue expenditure

A new venture set up by the existing business which is managed from common funds and there is necessary unity of control leading to an inter-connection, inter-dependence and inter-lacing of the two ventures such that it can be said that the new venture is only extension of the existing business, the expenditure incurred on new venture is not a pre-operative expenditure and is only a revenue expenditure.

Source: Jay Engineering Works Ltd. vs CIT, Delhi-III. (166 Taxman 115 [2008] Delhi)

INDIRECT TAX

1. Input services against construction of an immovable property is not eligible for CENVAT

Commercial or industrial construction service or

works contract service used for construction of an immovable property cannot be treated as input service for the output service namely renting of immovable property, since immovable property is neither subject to central excise duty nor to service tax.

Source: Service Tax Circular No. 98/1/2008-ST dated January 4th 2008

2. No exemptions for units carrying specified processes in Uttarakhand and Himachal Pradesh

Units located in Uttarakhand and Himachal Pradesh carrying out the processes of packing or re-packing of such goods in a unit container or labeling or re-labeling of containers, declaration or alteration of retail sale price would not be eligible for exemption benefit and would be required to pay duty as per normal procedure.

Further units claiming exemptions shall have to file quarterly return by 20th of the following quarter, however for the quarter ended December 2007, the last date of filing of return is 20th February 2008.

Source: Circular No. 863/1/2008-CX dated January 18th, 2008.

CORPORATE & OTHER LAWS

1. No need to obtain fresh certificate for a mere change of affiliation from one stock broker to another

SEBI notified all stock exchanges that there was no need to obtain fresh certificate for a mere change of affiliation from one stock broker to another stock broker as the broker was a member of the same stock exchange. Further, the procedure to be followed and the documents to be submitted for seeking approval for change in affiliation, by the sub-brokers, was subject to the specified table.

Source : SEBI Circular No. MIRSD-DR-1-MK-Cir-15-111600-07 dated 20 December 2007

2. Every person in charge is liable if criminal proceedings initiated under Negotiable Instrument Act, 1881

As per Section 141 of the Negotiable Instruments Act, 1881, in case of a Company if the Criminal proceedings are initiated & extended to Criminal liability, every person who, at the time of the offence, was in-charge and was responsible for the conduct of the business of the company, will be equally liable.

Source : J.N. Bhatia and Ors. vs State and Anr. -LexDocId : 322696

3. No consent of creditors necessary in amalgamation with holding company

Any meeting to obtain consent of creditors to a scheme of amalgamation was not necessary as the amalgamation of a wholly owned subsidiary with its holding company did not in any way affect the rights of the creditors.

Source: Magnaquest Solutions (P) Ltd., In re-LexDocId: 331187

4. Dishonour of cheques in time barred debt is an offence

Dishonour of cheques issued to settle a time barred debt constituted an offence under section 138 of the Negotiable Instruments Act, 1881, especially when the signatures on the instrument were not disputed.

Source : H. Narasimha Rao vs R. Venkataram -LexDocId : 326178

5. Equity listing Agreement amended

SEBI further amended the Equity Listing Agreement. The amendment was done with a view to bring more transparency in the governance of a listed company with regard to utilisation of issue proceeds and to enhance the continuing disclosures by listed companies.

Source : SEBI Circular No. SEBI-CFD-DIL-LA-4-2007-27-12 dated 27 December 2007

6. SEBI decided to waive the entry load to investors

SEBI, in order to facilitate the growth of the mutual fund industry, decided to waive the entry load for direct applications made, with effect from 4 January 2008. All the investors making applications for investments in mutual fund schemes directly, without routing through any distributor/agent/broker, i.e. through internet, submitted to AMC or

collection centre/ Investor Service Centre, would not be subject to entry load. Further, any additional purchases done directly by the investor under the same folio and switch-in to a scheme from other schemes, if such a transaction was done directly by the investor, would also be entitled to this waiver.

Source : SEBI Press Release No. 325-2007 dated 31 December 2007

FEMA

1. Regulatory framework for mortgage guarantee company

RBI has decided to specify Mortgage Guarantee Company as non-banking financial company in terms of powers conferred upon the Bank under Section 45 I (f) (iii) of the RBI Act, 1934.

Source: RBI Circular no 224 dated January 15, 2008

2. Permission for short selling of equity shares by SEBI registered FIIs

Government of India and Securities and Exchange Board of India ('SEBI') have decided to permit Foreign Institutional Investors (FIIs) registered with SEBI and sub-accounts of FIIs to short sell, lend and borrow equity shares of Indian companies.

Source: RBI Circular no. 219 dated January 1, 2008

3. RBI governor presents third quarter review of annual statement on Monetary Policy for 2007-08

Bank Rate kept unchanged at 6.0 per cent and CRR kept unchanged at 7.5 per cent. Further, the reverse repo rate and the repo rate under the LAF are kept unchanged at 6.0 per cent and 7.75 per cent, respectively.

Source: Press Release number 993 dated January 29, 2008

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