

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 Income tax effective from April 1st, 2008 for certain tax-payers**
All corporate and non-corporate tax-payers (subject to tax audit) are required to make electronic payment of income taxes with effect from April 1st, 2008.

Source - Notification no. 34/ 2008 Dated March 13th, 2008.

2. **Double Taxation Avoidance Agreement ('DTAA') with Tajikistan**

The Government of India, in order to avoid double taxation and for prevention of fiscal evasion with respect to taxes on income has signed a DTAA with the Government of Tajikistan.

Source - PIB Press Release Dated March 13th, 2008.

3. **Method prescribed for determination of expenditure in relation to exempted income**

Rule 8D has been notified by Central Board of Direct Taxes ('CBDT') to prescribe the method to be used by the Assessing Officers to determine the expenditure relating to incomes exempted from

income tax and to disallow those expenditures as per section 14A.

Source - Notification no. 45/ 2008 Dated March 24th, 2008.

INDIRECT TAX

1. Prevention of Smuggling

The Central Government has notified a specified area around the Bangladesh Border for the purpose of Section 11 of the Customs Act, 1962 having regard to the vulnerability of that area to smuggling activities.

Source - Notification No. 31 ; Dated Mar 25, 2008.

2. Anti Dumping Duty on Caustic Soda

The Central Government further amended 'Customs Notification 168 dated November 14,2003 whereby the period of imposition of anti-dumping duty on Caustic Soda from subject countries (European Union ,Indonesia and Chinese Taipei) was extended uptill March 26,2009.

Source - Notification No. 39 - Dated March 26, 2008.

SERVICE TAX

1. Service Tax Proceedings

Central Government has issued guidelines with respect to publications of names of assesses or any other particulars relating to proceedings under Section 73 D of the Finance Act 1994.

Source - Circular No 100-3-2008-ST - Dated March 12, 2008.

CORPORATE & OTHER LAWS

1. No objection maintainable once amalgamation scheme duly sanctioned

An objection raised by a shareholder against the scheme of amalgamation was not entertained as the said objection had been raised after the scheme had been duly sanctioned by the court. The concerned shareholder avoided the meeting of the shareholders and did not object to the proposed reduction of share capital in time.

Source: Mahendra Papatlal Shah vs Alfred Herbert India Ltd. and Anr.

2. Ex-director cannot be held personally liable for misconduct of general nature

An application seeking examination of conduct of

ex-directors of a company was dismissed since the report of the official liquidator showed that all allegations of misfeasance and misconduct against the ex-directors were general in nature and no act of dishonesty and misappropriation was specifically pointed out.

Source : OL, High Court vs Gautham Dhiraj Mal and GDA Security (P) Ltd. vs Mangal Processing Mill Ltd.

3. SEBI issued circular on Comprehensive Risk Management Framework

SEBI had issued a circular MRD-DoP-SE-Cir-7-2005 dated 23 February 2005 on Comprehensive Risk Management Framework. In order to provide a level playing field to all the investors in the cash market as in the case of derivatives market, SEBI partially modified the circular to provide that all institutional trades in the cash market would be subject to payment of margins as applicable to transactions of other investors. This was implemented with effect from 21 April 2008. To begin with, from 21 April 2008, all institutional trades in the cash market would be margined on a T+1 basis with margin being collected from the custodian upon confirmation of the trade. Subsequently, with effect from 16 June 2008, the collection of margins were to move to an upfront basis.

Source : SEBI Circular No. MRD-DoP-SE-Cir-06-2008 dated 19 March 2008

4. No oppression and mismanagement if shares have been sold

A petition against oppression and mismanagement within a company was not maintainable any further after the petitioner had ceased to exist as a member of the company on account of sale of its shares in an auction conducted by the income tax authority.

Source : Hungerford Investments Trust Ltd. vs Turner Morrison and Co. Ltd. and Ors.

FEMA

1. Prudential Norms for Issuance of Letters of Comfort by Banks regarding their Subsidiaries

RBI has instructed that every issuance of an LoC shall be subject to the prior approval by the Board of Directors of the bank and a well defined policy for issuance of LoCs should be laid down, including the

indicative cumulative ceilings up to which LoCs could be issued by the banks for various purposes. Certain assessment guidelines for LOCs has also been defined.

Source: RBI/2007- 2008/255 DBOD No. BP. BC.65 / 21.04.009/ 2007-08 dated March 4, 2008

2. UCBs - Advances to Builders / Contractors

RBI has clarified that UCBs should not extend fund based / non-fund based facilities to builders / contractors for acquisition of land even as a part of a housing project. Further, wherever land is accepted as collateral, valuation of such land should be at the current market price only.

Source: RBI/2007-2008/251 UBD. CO BPD (PCB). No. 33/ 13.05.000/2007-08 dated February 29, 2008

3. Cut off time for e-Payment transactions pertaining to Government Revenue

It has been decided in consultation with Central Board of Excise & Customs that e-payment received upto 8.00 p.m. may be treated as received on that day and payment received after this time limit may be treated as received on next working day.

Source: RBI/2007-2008/256 DGBA GAD No. H 9561/ 41.07.003/2007-08 dated March 5, 2008

4. Use of electronic mode of payment for large value transactions

RBI has now decided that all payment transactions of Rs 1 crore and above between the RBI regulated entities such as banks, primary dealers and NBFCs and in RBI regulated markets such as money market, Government securities market and foreign exchange market shall be mandatorily routed through electronic payment systems with effect from 1st April, 2008.

Source: RBI/2007-2008/261 DPSS No. 1407 / 02.10.02 / 2007-2008 dated March 10, 2008

5. Customer charges for use of ATMs for cash withdrawal and balance enquiry

With a view that a customer should be able to access any ATM installed in the country free of charge the RBI has declared that the balance enquiries at any ATM is free and the cash withdrawals at any ATM shall be charged at a maximum rate of Rs 20 per transaction and that the same would be free w.e.f. 1st April, 2009.

Source: RBI/2007-2008/260 DPSS No.1405 / 02.10.02 / 2007-2008 dated March 10, 2008

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