

RNM ALERT

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U.N. Marwah

Dear Readers,

We are pleased to inform you that Mr. Raghu Marwah, Managing Partner has been appointed as the Chairman of the Delhi Chapter of Young Indians (Yi) for the Financial Year 2010-11. Yi is an integral part of the Confederation of Indian Industry (CII), India's premier business association.

The due date for filing of the Return of Income for A.Y. 2010-11 of corporates and other assessee's covered under the Tax Audit ambit is fast approaching. All readers are advised to do the filing in advance and avoid the last minute rush.

The Ministry of Corporate Affairs has, to prevent last minute rush in filing of Annual Returns, prescribed certain days, fixed on an alphabetic basis, during which companies shall be permitted to upload their files.

The judgement of the Bombay High Court in the case of Vodafone has upheld the jurisdiction of the Income Tax authorities to levy tax on the overseas transaction wherein control of the underlying Indian operations were transferred thru a web of companies located outside India. This is a landmark judgment which will influence the entry strategy of most foreign investors.

The Direct Tax Code Bill was introduced on August 30, 2010 before the Lok Sabha to enact the Direct Tax Code that will replace the archaic income and wealth tax laws in the country, a key reform initiative that is aimed at widening the tax net and increasing federal revenues.

The RNM Team would like to wish all readers in advance all the best for Gandhi Jayanti.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

CONTENTS

Direct Tax

- *Case Laws*

- Income from House Property	4
- Profits & Gain from Business & Profession	4 - 5
- Capital gains	5
- Deductions & Exemptions	5 - 6
- Cash Credits	6
- Minimum Alternate Tax	6
- Income escaping Assessment	6
- Deduction of Tax at Source	7
- Penalty	7
- Wealth Tax	8

- *Latest Notification/ News*

- Time limit for filing ITR-V for assessment year 2009-10 extended	8
- Digital Signing of Income Tax Return for AY 2010-2011	8

Indirect Tax

Custom, Central Excise & Service Tax

- *Case Laws*

- Service Tax on Value of SIM Card	9
- Service Tax Liability is subject to Realization of Service Charges	9
- Service Tax On GTA	9
- Satisfaction of All Conditions Must for Franchise Service	10
- CENVAT Credit of Mobile Phone	10
- No Time Limit if Direction of Supreme Court	10
- Claim of CENVAT Credit on Fictitious Documents Attracts Denial and Penalty	10 - 11
- CENVAT Credit on Inputs Used for Repair and Maintenance of Plant and Machinery	11

- *Latest Notification/ News*

- Circular	12
- Customs	12
- Foreign Trade Policy & SEZ	12
- Commonwealth Games exemption clarification	12 - 13
- GST May Miss April 1, 2011	13

Company Law

- Latest Notifications/ News

- Procedure for filing Statutory Returns 2010 14
- Roadmap for Applicability of Converged Accounting Standards to Indian Companies 15 - 16

SEBI Updates

- Transferability of Mutual Fund units 17
- Updation of investor related documents 17
- Allocation of Government debt & Corporate debt investment limits to FIIs 17 - 19
- Mandatory requirement of Permanent Account Number (PAN) 19

Foreign Exchange Management Act & RBI Regulation

- External Commercial Borrowings (ECB) Policy – Liberalization 20
- Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs) 20 - 21
- Establishment of BO / LO in India by Foreign Entities 21

Corporate Finance

- Latest News

- Private Equity 22 - 23
- Investment Banking 23 - 25
- Venture Capital 25 - 26

➤ Case Laws

Income from House Property

S. 22: Income from House Property or Business Income - (S. 28)

The assessee carrying on the business of dealing and investing in properties flats, warehouses, shops, etc., purchased flats for trading purposes but let them out on licence basis for temporary and earned monthly rental income as licence fee, the Court held that rental income is assessable as income from House Property.

[Mangalan Homes P. Ltd. vs. ITO (2010) 325 ITR 281 (Bom.)]

Profits & Gain from Business & Profession

S. 28, 36(1)(vii)

Business Loss – Bad Debts – Share Broking Business – Sums owed to Assessee by clients on whose behalf transactions undertaken – Amount written off not shown as Income in earlier year – Can be allowed as Business Loss – Income Tax Act, 1961,

[Jalpradeep Securities Ltd V. DCIT [2010] 4 ITR (Trib) 491 (Delhi)]

S. 28(i): Business Loss – Non recovery of PF contribution - Prior period Expenditure

Loss suffered by the assessee on account of non-recovery of PF contributions of personnel who were deputed to other State Government concerns / departments which was recoverable from the said customers and written off by assessee is allowable as trading loss under section 28(i), even

though the said amount has been debited in the Profit & Loss A/c as prior period expenditure.

[Hartron Informatics Ltd. vs. ACIT (2010) 41 DTR 489 (Chd.) (Trib.)]

S. 32(1) (ii): Depreciation - Lease of Premises – Deposit - Intangible Asset

Assessee was not entitled to depreciation on the amount paid by it as deposit while renewing the agreement of lease of premises since by making such payment the assessee did not acquire any asset at all. The amount paid is not a licence or intangible asset nor a commercial right of the nature specified in section 32(1)(ii).

[ACIT vs. MalyalaManorama Co. Ltd. (2010) 41 DTR 93 (Coch.)(Trib.)]

S. 32(1) (ii): Depreciation - Goodwill

Goodwill is not an intangible asset within the meaning of section 32(1)(ii), hence, not entitled to depreciation.

[Modular Infotech (P) Ltd. vs. Dy. CIT (2010) 131 TTJ 243 (Pune)]

S. 43B: Business Disallowance – Interest

Interest accrued for year under consideration, even though payable on date of maturity of bonds was still allowable in view of mercantile system of accounting followed by assessee. Since, interest was payable in respect of certain deposits received by assessee and not in respect of any loans and advances or borrowings made by assessee, clause (e) of section 43B relating to loans and advances from a scheduled bank was not applicable to instant case.

[Gujarat Toll Road Investment Co. Ltd. vs. ACIT (2010) 125 ITD 159 (All)]

Capital gains

S. 48: Capital Gains - Indexed Cost - Date of Agreement - Possession cost of improvement – Payment to tenant

For the purpose of determining the indexed cost of acquisition of property, indexation has to be allowed from the date on which the assessee purchased the property by way of agreement and not from the date on which the assessee got vacant possession thereof after evicting the tenant. Assessee is entitled to consider the amount paid to the tenant for obtaining vacant possession as cost of improvement of property.

[Nita A. Patel (Mrs.) vs. ITO (2010) 40 DTR 507 (Mum.)(Trib.)]

S 2(47)(V)

Capital Gains – Transfer – Finding that possession given following Agreement for Sale – Gains assessable in hands of Transferor.

Cash Credits – No books of account or evidence of cash balance produced – Amount assessable to tax.

[C. Ravi V. DCIT.[2010] 325 ITR 417 (Ker)]

Deductions & Exemptions

S. 14A: Rule 8D Not Retrospective – Reasonable Basis

Rule 8D r.w.s. 14A (2) is not arbitrary or unreasonable but can be applied only if assessee's method is not satisfactory. Rule 8D is not retrospective and applies from AY 2008-09. For earlier years, disallowance has to be worked out on "reasonable basis" under section 14A (1).

[Godrej & Boyce Mfg. Co. Ltd. vs. Dy. CIT (Bombay High Court) ITA NO. 626 OF 2010]

S. 54F: Capital Gains – Exemption

When residential property is allotted in lieu of transfer of land as per development agreement with developer, assessee is entitled to exemption under section 54F.

[R. Gopinath (HUF) vs. ACIT (2010) 42 DTR 127 (Chennai) (Trib.)]

Cash Credits

S. 68: Share Application Money - Income from Undisclosed Sources

Merely because some of the persons did not respond to the notice issued by the Assessing Officer under section 133(6), of the Act, it could not be taken that the transaction was not genuine. The amount could not be added as unexplained

income in the hands of the assessee.

[CIT vs. GP International Ltd. (2010) 325 ITR 25 (P & H)]

Minimum Alternate Tax

S. 115JB: Book Profit - Minimum Alternate Tax – Foreign Company

S. 115JB (MAT) is not applicable to a foreign company without presence in India.

[In Re The Timken Company (AAR)]

Income escaping Assessment

S-147

Reopening beyond 4 years on basis of Supreme Court's judgment not justified if assessee has not failed to disclose material facts.

[CIT vs. M/s. Baer Shoes (India) Pvt.Ltd. Tax Case (Appeal) No.706 of 2010]

Mere disclosing amount of any income or loss without disclosing particulars of income or loss cannot be said to be a full and true disclosure of facts

Merely because the assessee is not required to disclose the particulars of sale and purchase of units in audit report obtained under the Companies Act, it cannot be a bona fide reason or an excuse for not disclosing the same in the statement of accounts or any annexure filed along with the return of income for the purpose of determining the total income under the Act.

[Survidhi Financial Services Ltd. v. ACIT [ITA No. 12/Del of 2010] [2010] 6 taxmann.com 79 (NEW DELHI - ITAT)]

Deduction of Tax at Source

S. 195: Software – Royalty

Fee for software is NOT royalty and TDS under section 195 not required.

[Kansai Nerolac Paints vs. ADIT (ITAT Mumbai)]

S. 195: Non-resident - Reimbursement of Expenses – [S. 40(a) (i)]

As the reimbursement of expenses is not taxable in the hands of non-resident payee, there is no need for assessee to deduct TDS and he cannot be held to be assessee in default, consequently no disallowance under section 40(a)(i) is called for.

[NathpaJhakri Joint Venture vs. ACIT (2010) 41 DTR 233 (Mum.)(Trib.)]

Advance Tax – Interest – Non Resident – Income Subject To Deduction of Tax At Source –

No Liability To Pay Advance Tax – Interest Not Leviable – Income Tax Act, 1961, Ss. 195, 234b.

[DDIT (International Taxation) V. Scientific Atlanta Inc. [2010] 4 ITR (Trib) 422 (Mumbai)]

Section 194C

Payments to Contractors/ sub-contractors for Assessment year 2006-07 – Assessee was engaged in the business of manufacture and marketing of drugs and pharmaceuticals products – It had entered into an agreement under which pharmaceutical products were being manufactured by third parties according to specifications and standards provided by assessee under its trademark. Agreement was on a principal-to-principal basis and property in goods passed on to assessee only on delivery – Raw material was purchased by manufacturer itself – Whether,

on facts, contract entered into by assessee was contract of sale and not a contract for carrying on any work within meaning of section 194C – Held, yes.

[CIT V. Glenmark Pharmaceuticals Ltd [2010] 191 TAXMAN 455 (BOM)]

Penalty

S. 271(1) (c) – Concealment - Deemed Dividend

Loan treated as deemed dividend and consequently penalty was levied. The Tribunal cancelled the penalty. The Court held that the Tribunal was not justified in cancelling the penalty, without considering facts relied on by Assessing Officer. The matter remanded to Tribunal for fresh decision.

[CIT vs. Alkesh K. Patel (2010) 325 ITR 118 (Bom.)]

WEALTH TAX

S. 2(ea): Wealth Tax – Exemption - Urban land - Building Constructed

Building in the process of construction could not be understood as a building which had been constructed. The definition of 'urban land' excludes 'land occupied by any building which has been constructed'. The Court held that since constructed would mean 'fully constructed' as used in common parlance, the said land would be treated as 'urban land'.

[CWT vs. Giridhar G. Yadalam (2010) 325 ITR 223 (Karn.)]

S. 2(a): Wealth Tax – Assets - Exemption

Two years tax exemption period qua industrial plots held by assessee would be reckoned from date of acquisition of plots by it and not from date

when permission to change land in use for industrial purpose was granted.

[Rockman Cycle Industries Ltd. vs. CWT (2010) 191 Taxman 399 (P & H)]

➤ Latest Notification/ News

Time limit for filing ITR-V for assessment year 2009-10 extended

The Central Board of Direct Taxes (CBDT) has decided to extend the time limit for filing ITR-V forms relating to income-tax returns for A.Y. 2009-10 filed electronically (without digital signature) on or after 1st April 2009. These ITR-V forms can now be filed up to 31st December 2010 or within a period of 120 days of uploading of the electronic return data, whichever is later.

[Press Release, dated 01-09-2010]

Digital Signing of Income Tax Return for AY 2010-2011

As per the New Guidelines for DSC Interoperability issued by the CCA, Government of India, a new type of Digital Signature Certificate has been introduced with effect from 01/08/2010 wherein the Permanent Account Number (PAN) has been included in an encrypted format as an attribute.

In view of the Notification No. dated 9th July 2010 amending Rule 12, the CBDT has made it mandatory all Companies filing ITR-6 to digitally sign the I-T return for AY 2010-11. Income Tax Department has recommended that the Authorized Signatory must use a New DSC having encrypted value of his PAN.

[Controller of Certifying Authorities, Dept. of Information Technology, Govt. of India]

INDIRECT TAX

Customs, Central Excise & Service Tax

➤ Case Laws

Service Tax on Value of SIM Card

In the case of Hutchison Max Telecom Pvt. Ltd. v Commissioner 2008(12) STR 373 (Tri-Del) the Tribunal had held that value of SIM card was not includible in taxable value for service tax since sales tax was paid on sale of such SIM card.

The Bombay High Court Bench has admitted the Central Excise Appeal filed by Commissioner of Service Tax, Mumbai against CESTAT order in the above mentioned case.

[Hutchison Max Telecom Pvt. Ltd. v Commissioner 2008(12) STR 373 (Tri-Del)]

Service Tax Liability is subject to Realization of Service Charges

In this matter Service Tax on certain bills not paid as amount not received from clients. The Tribunal held that service tax not payable on mere receipt of bills and bills reflected in books of accounts. Service Tax liability is subject to realization of service charges. Section 66 of Finance Act, 1994 and Rule 6 of Service Tax Rules, 1994.

[Excel Consultancy v Commissioner of Central Excise, Bhopal, 2010(19), STR, 665(Tri-Del.)]

Service Tax on GTA

In this case Service Tax was not paid on transportation of goods which was transported on behalf of the Respondent to job work. But the Service tax was paid by job workers on GTA service. Consignment notes issued by GTA showing goods supplied to job worker as consignees. The Tribunal held that the Respondent not falling under category of consignee. The Tribunal further held that respondent not liable to pay service tax on GTA. Service tax liability was discharged by job worker as consignees.

[Commissioner of Central Excise, Coimbatore v Elgi Ultra

Industries Ltd., 2010(19), STR, 669(Tri-Chennai)]

Satisfaction of All Conditions Must for Franchise Service

In this matter franchisees were appointed by the Appellant to provide courier service. These franchise agreements were interred into with several persons. In this agreement agents were designated as franchisees and conditions of franchise agreement not enforced. The appellant were not receiving fees from agents and agents were not prohibited from rendering similar services to any other person, which were important condition for taxability of service under “Franchise Service”. The Tribunal held that the Appellant is not a franchiser rendering Franchise service.

[Bonanza Speed Courier Pvt. Ltd. v Commissioner of Customs & Central Excise, Cochin, 2010(19), STR, 675(Tri-Bang.)]

CENVAT Credit of Mobile Phone

In this case the Tribunal held the assessee is under obligation to proof that mobile phone, for which CENVAT Credit is claimed, is used, directly or indirectly, in relation to the manufacture and/or clearance of excisable goods from the factory.

[Commissioner of Central Excise, Pune-I v Krishna Fabrications Pvt. Ltd., 2010(19), STR, 675(Tri-Bang.)]

Central Excise Cases

No Time Limit if Direction of Supreme Court

In this matter Show Cause Notice was issued to

petitioner on ground of non-fulfillment of export obligation. Petitioner contended that issue pertaining to 1996 and 1998 and SCN issued in 2009 hit by time-bar. The Court held that Show Cause Notice issued pursuant to directions of Supreme Court issued in 2009. The order expressly requiring that assessee not to raise plea of limitation and the Commissioner is duty bound to abide by directions of Supreme Court and SCN issued is valid.

[Haryana Sheet Glass Ltd V Union of India, 2010 (257) Elt 22(Guj.)]

Claim of CENVAT Credit on Fictitious Documents Attracts Denial and Penalty

The Tribunal found that the vehicle numbers mentioned in

invoices used for availing credit, fictitious and Lorry receipt or GR copy not produced by consigner for providing dispatch of goods. It was found that goods were not received and invoices issued without sending goods. The Hon'ble High Court was right in denying credit and imposition of penalty.

[**Simplex Steel Industries V Commissioner Of Central Excise, 2010 (257) Elt 28 (P&H)**]

CENVAT Credit on Inputs Used for Repair and Maintenance of Plant and Machinery

Inputs used for repair and maintenance of plant and machinery. The Tribunal order benefit assailed submitting that order in case of SAIL [2008(222) ELT 233(Tribunal)] not allowed

credit and that said order already affirmed by Supreme Court [2008(229) ELT A127(SC)]. The Hon'ble High Court held that present case arising after amendment brought in year 2000 which allowed CENVAT Credit on such inputs. Case of SAIL pertained to period prior to amendment. Tribunal justified in allowing appeal of assessee.

[**Commissioner Of C. Ex., Bangalore-I V Alfred Herbert (India) Ltd 2010(257) Elt 29 (Kar.)**]

➤ Latest Notification / News

Circular

For officers' inspection of factory stuffing of export goods, assessee can request for schedule by e-mail. The Commissionerate will monitor such requests and timely response. Online facility for such requests is understandable. Generally, assessees prefer request over phone though letters are also given for record purpose.

[C.B.E.&C. Circular No. 934/24/2010-C.E., dated 25-8-2010]

Customs

Specified goods, import of which is otherwise restricted, required for organizing the Commonwealth Games can be imported without any authorization from DGFT.

The imports shall be under the customs duty exemption Notification No. 13/2010-Cus. And conditions in such notification will be applicable-M.C. & I. (D.C.) [Notification No. 2(RE-2010/2009-14, dated 27-8-2010)]

Foreign Trade Policy & SEZ

Transfer of goods from SEZ to bonded warehouse- Procedures prescribed.

-Rule 46(13) of SEZ Rules, 2006 allows SEZ unit to transfer goods without payment of duty to EOUs/EHTP/STP units or a bonded warehouse. Detailed procedures for such removal of goods to warehouse are now prescribed. Filing of yellow bills of entry with copies of invoice, packing list etc, fifth copy of BOE containing verification by SEZ Customs to be the basis

for transfer, issue of re-warehouse certificate by Officer in charge of bonded warehouse and recovery of duty with interest from SEZ Unit on failure to furnish re-warehousing certificate within 45 days, are provided.

[M.C. & I. (D.C.) SEZ Instruction No. 63, dated 10-08-2010]

Commonwealth Games exemption clarification

Notification No. 13/2010-Cus., dated 19-02-2010 provides exemption to specified goods imported for commonwealth Games to be held in New Delhi in October. Clarifying doubt as to who is eligible to avail exemption, C.B.E & C states that suppliers, contractors and vendors appointed by the Organizing committee of Commonwealth Games are not eligible. The Notification

provides exemption to the imports made by Organizing Committee or national sports Federation or athletes in certain cases.

[Circular No. 26/2010 – Cus.]

GST May Miss April 1, 2011

Revenue Secretary Sunil Mitra hinted at a CII event that the Constitution Amendment Bill was unlikely to be tabled in the current session of Parliament resulting proposed indirect tax regime may miss the

deadline of April, 2011. Constitution Amendment Bill necessary for giving power to the states to impose Service Tax.

COMPANYLAW UPDATES

➤ Latest Notification / News

Procedure for filing Statutory Returns 2010

To avoid last minute rush and system congestion in MCA21 due to heavy filing in last 10 days of the months of October and November 2010, it is requested that filing of Annual Return and Balance Sheet may be done in the following order:-

Company Names starting with	September 2010	October 2010	November 2010
Alphabets A to D	All days during the month	1st Oct to 05 Oct 2010	1st Nov to 05 Nov 2010
Alphabets E to K	Do	6th Oct to 10th Oct 2010	6th Nov to 10th Nov 2010
Alphabets L to Q	Do	11th Oct to 15th Oct 2010	11th Nov to 15th Nov 2010
Alphabets R & S	Do	16th Oct to 20th Oct 2010	16th Nov to 20th Nov 2010
Alphabets T to Z	Do	21st Oct to 25th Oct 2010	21st Nov to 25th Nov 2010
Remaining/ Left out companies	Do	26th Oct to 31st Oct 2010	26th Nov to 30th Nov 2010

You are requested to plan your annual general meeting and filing accordingly.

[Issued by Ministry of Corporate Affairs, Government of India]

Roadmap for Applicability of Converged Accounting Standards to Indian Companies

Companies other than Insurance companies, Banking companies and Non-Banking finance companies		
Will Apply to	Date of Applicability	Will not Apply to
Phase I :- (i) NSE-Nifty 50 and BSE-Sensex 30 companies (ii) Companies listed in overseas stock exchanges (iii) Companies with net worth above Rs. 1000 crore	1 st April, 2011	(i) Unlisted companies having a net worth of Rs. 500 crore or less and whose securities are not listed overseas (ii) Small and medium companies (SMCs) They can voluntarily opt to follow the converged Accounting Standards
Phase II :- Companies whether listed or not having a net worth exceeding Rs. 500 crore but not above Rs. 1000 crore	1 st April, 2013	
Phase III :- Listed companies having a net worth of Rs. 500 crore or less	1 st April, 2014	
* When the accounting year ends on a date other than 31st March, the conversion of the opening Balance Sheet will be made in relation to the first Balance Sheet which is made on a date after 31st March.		

Insurance companies, Banking companies and Non-Banking finance companies		
Will Apply to	Date of Applicability	Will not Apply to
<p>Phase I (i) All insurance companies</p>	<p>1st April, 2012</p>	<p>(i) Urban co-operative banks having net worth ≥ 200 crore and regional rural banks (ii) Listed NBFCs and unlisted NBFCs, not being part of Nifty and Sensex, with net worth above Rs. 500 crore (iii) Unlisted NBFCs having a net worth of Rs. 500 crore or less.</p> <ul style="list-style-type: none"> ▪ They can voluntarily opt to follow the converged accounting standards
<p>Phase II (ii)(a) NSE-Nifty 50 or BSE- Sensex 30 NBFCs. and NBFCs, listed or not, having a net worth above Rs 1000 crore. (b) Scheduled commercial banks and urban co-operative banks with net worth net worth above Rs. 300 crore</p>	<p>1st April, 2013</p>	
<p>Phase III (iii) Urban co-operative banks having a net worth in excess of Rs. 200 crore but not exceeding 300 crore</p>	<p>1st April, 2014</p>	

SEBI UPDATES

Transferability of Mutual Fund units

In order to facilitate transferability of units of mutual funds held in one demat account to another demat account, it has been decided that all AMCs shall clarify by way of an addendum that units of all mutual fund schemes held in demat form shall be freely transferable from the date of the issue of said addendum which shall be not later than October 1, 2010. However, restrictions on transfer of units of ELSS schemes during the lock-in period shall continue to be applicable as per the ELSS Guidelines.

[Circular CIR/IMD/DF/10/2010
dated August 18, 2010]

Updation of investor related documents

In order to ensure that investors have unrestricted access to AMCs and to enable AMCs to provide prompt investor service including execution of investors' financial or non-financial transactions, all mutual funds/ AMCs are directed that:

1. All new folios/ accounts shall be opened only after ensuring that all investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature are available with AMCs/RTAs and not just with the distributor.
2. For existing folios, AMCs shall be responsible for updation

of the investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature by November 15, 2010.

The trustees shall submit a confirmation after they receive certification from an Independent auditor on completion of the said process latest by November 22, 2010.

[Circular Cir / IMD / DF / 9 / 2010
dated 12.08.2010]

Allocation of Government debt & corporate debt investment limits to FIIs

Based on the assessment of the allocation and the utilization of the limits to FIIs for investments in Corporate Debt and Government Debt, it has been

decided to allocate the unutilized limits in the following manner:-

Allocation through bidding process:

Please refer to SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, providing the modalities for the allocation methodology through the bidding process. The bidding process shall be on August 12, 2010 on the National Stock Exchange subject to the following conditions: -

A. Government Debt:

i. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than Rs.100 cr. of the government debt investment limit.

ii. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII & C/ 37/2009, the minimum amount which can be bid for shall be Rs.50 cr. and the minimum ticket size shall be Rs.50 cr.

B. Corporate Debt:

i. In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/37/2009, no single entity shall be allocated more than Rs.1000 cr. Of the corporate debt investment limit.

ii. In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII & C/ 37/2009, the minimum amount which can be bid for shall be Rs.50 cr. and

the minimum ticket size shall be Rs.50 cr.

iii. Time period for utilization of the allocated debt limit through bidding process shall be 45 days starting from August 13, 2010.

Allocation through first come first serve process (FCFS):

In terms of SEBI circular dated January 31, 2008, the Government debt & corporate debt limits shall be allocated in the first come first served basis subject to the following conditions:-

a) The remaining amount in government debt & corporate debt after bidding process shall be allocated among the FIIs/sub-accounts on a first come first served basis, subject to a ceiling

of Rs.49 cr. per registered entity.

- b) The debt requests in this regard shall be forwarded to the dedicated email id fii_debtrequests@sebi.gov.in. The window for first come first served process shall open at 08:30 AM IST, August 12, 2010.
- c) Time period for utilization of the allocated debt limit through first come first served basis shall be 11 working days from the date of the allocation.
- d) A non-utilisation charge would be levied at average successful bid premium (in bidding process) for non-utilised

part from the allocation in first come first serve.

[Circular CIR/IMD/FIIC/9/2010 dated August 06, 2010]

Mandatory requirement of Permanent Account Number (PAN)

In order to ensure better compliance with the Know Your Client (KYC) norms it has been decided that with effect from August 16, 2010 such PAN non-compliant demat accounts shall also be "suspended for credit" other than the credits arising out of automatic corporate actions. It is clarified that other credits including credits from IPO/FPO/Rights issue, off-market transactions or any

secondary market transactions shall not be allowed into such accounts.

The Depositories are advised to:-

- a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary ;
- b) bring the provisions of this circular to the notice of their DPs and advising them to also communicate the same to all the Beneficial Owners (BOs); and
- c) disseminate the same on the website.

[CIR/MRD/DP/ 22 /2010 dated July29,2010]

Foreign Exchange Management Act & RBI Regulation

External Commercial Borrowings (ECB) Policy – Liberalization

➤ At present, entities in the services sectors viz., Hotels, Hospitals and Software are allowed to avail of ECB up to USD 100 million per financial year under the Automatic Route, for foreign currency and/or Rupee capital expenditure for permissible end-uses.

➤ It has now been decided to consider applications from the corporates in the Hotel, Hospital and Software sectors to avail of ECB beyond USD 100 million under the Approval Route, for foreign currency and / or Rupee capital expenditure for

permissible end-uses. However, the proceeds of the ECB should not be used for acquisition of land.

➤ The modifications to the ECB guidelines will come into force with immediate effect. All other norms of the extant ECB policy relating to eligible borrower, recognized lender, end-use, all-in-cost ceiling, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements would continue to apply in the case of ECBs availed of by the aforesaid sectors under the Automatic Route.

[A.P. (DIR Series) circular No. 08 dated August 12, 2010]

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

On a review of the policy, whereby Indian companies were allowed to buy back their Foreign Currency Convertible Bonds (FCCBs) under the approval route, up to June 30, 2010 subject to the issuers complying with all the terms and conditions of buyback/ prepayment of FCCBs, and in view of the representations received from the issuers of FCCBs, it has been decided to consider applications, under the approval route, for buyback of FCCBs until June 30, 2011, subject to the terms

and conditions of buyback/ prepayment of FCCBs, as mentioned in the A.P. (DIR Series) Circular No.39 dated December 08, 2008 and A.P. (DIR Series) Circular No.65 dated April 28, 2009. Accordingly, the applications, complying with the conditions may be submitted, together with the supporting documents, through the designated AD Category - I bank, to the RBI.

[A.P. (DIR Series) Circular No.07 dated August 09, 2010]

Establishment of BO / LO in India by Foreign Entities

In view of the difficulties expressed by some Liaison Offices (LO) / Branch Offices (BO) in submitting the Annual Activity Certificates (AACs), on or before April 30 every year to the designated AD Category-I bank and a copy to the Directorate General of Income Tax (International Taxation) New Delhi, it has been decided to review the current calendar for the same. Accordingly, the AACs from the Auditors, as at end of March 31, along with the audited Balance Sheet may be submitted on or before September 30 of that year. In case the annual

accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet. All the other instructions of A.P. (DIR Series) Circular No.24 dated December 30, 2009 shall remain unchanged.

[A.P. (DIR Series) Circular No. 06 dated August 09, 2010]

CORPORATE FINANCE

➤ Latest News

PRIVATE EQUITY

Barclays PE in Talks to Sell GHD Stake

Barclays private equity is in advanced talks to sell its majority stake in German health services company GHD, citing GHD manager and part-owner Andreas Rudolph. GHD will generate almost 300 million Euros (\$394 million) in sales this year, Rudolph said. The company offers health services including transport and storage of pharmaceuticals and medical equipment, nutrition consulting for cancer patients and infusion therapies.

[Source- Economic Times- 05 Aug 2010]

GVK Power to Raise Rs 1500 Crore from Private Equity Funds

GVK power and infrastructure Ltd, Hyderabad-based infra major is mulling to raise around Rs 1500 Core from private equity players to fund its expansion plans. The company is actively holding discussion with PE firms and the deal is likely to be finalized in a month. Sources said two PE firms are among the front runners. While one firm has evinced interest in investing in airports vertical, the other one may invest in power sector.

The company operates two of the biggest airports in the country, Mumbai and Bangalore, and holds nearly 37 per cent stake in MIAL

(Mumbai) and 29 per cent in BIAL (Bangalore).

[Source- Economic Times- 13 Aug 2010]

Sequoia Capital Invests Rs 60 Cr in Quick Heal Technologies

Sequoia capital, has invested Rs 60 Crore in Quickheal technologies, provider of computer security software products. The firm will use this investment in growing its product portfolio, expanding its global distribution footprint and funding future acquisitions. The company registered revenues of more than Rs 100 Crore in FY 09-10, all from its indigenously developed product portfolio. With this investment SumirChadha, managing director, Sequoia Capital India will join the board of the company. Quick

heal technologies that competes with global security solutions providers like Symantec, McAfee and others has been growing at a compounded annual growth rate (CAGR) of almost 100 per cent for the last three years, making it the fastest growing software product company in the computer security space in India.

[Source- India pe.com- 17 Aug 2010]

IL&FS Fund May Raise Rs 2k Cr Via Realty Exits

IL&FS investment managers (IIML), the country's largest private equity fund, is close to exiting at least six of its investments, mainly in the real estate sector by the end of the current fiscal. The private equity firm, with over \$2.8 billion of assets under management, will raise around Rs 1,500-2,000 Crore through

the exits, which are mainly due to the maturing of the investment horizon, according to vice chairman Shahzaad Dalal. The returns could average 25-30% from the real estate investments that were made about five years ago.

The private equity arm of infrastructure leasing and financial services (ILFS) has invested more than \$1 billion or Rs 4,600 Crore through 41 transactions across the country.

[Source- Economic Times- 18 Aug 2010]

Kotak PE Picks Stake In Muthoot Finance

Muthoot finance (MFIN) announced that it has raised Rs 43 Crore in the second round of institutional funding from KotakIndia private equity fund (KIPEF) for a minority stake in the company. This capital infusion will strengthen the

company's capital base, it said in a release here. During the first round of institutional funding, Muthoot raised Rs 157 crore from two leading PE namely Baring private equity Partners India and Matrix Partners India for a four per cent stake. Currently, MFIL has a gross loan book exceeding Rs 10,000 crore and more than 1,800 branches across the country.

[Source- India pe.com- 25 Aug 2010]

Investment banking

BNPParibas Net Profit Soars in 2nd Quarter

BNPParibas SA said its net profit soared 31 percent in the second quarter as steep retail banking gains in France and the Benelux region offset declines in its investment banking operations. The euro-zone's largest banking group by deposits said in a statement its

net profit for the three months to June was Euro2.1 billion (US\$2.7 billion), up from Euro1.6 billion a year earlier.

[Source- Economic Times- 02 Aug 2010]

Yes Bank, HDIB in Tie-up for I-banking

Private lender, Yes Bank, has entered into a co-operation agreement with South Korea's Hana Daetoo Investment bank (HDIB) to advice companies in cross-border deals. The alliance will leverage on each of the partners' strong local knowledge and corporate relationships to open-up mergers and acquisitions joint ventures, equity raising and merchant banking opportunities. HDIB is the i-banking arm of Hana Financial group, a leading financial group serving corporate and retail clients in Korea.

The Governments of India and South Korea, both emerging economies, have set a target to double bilateral trade to USD 30-billion per year by 2014 and have already signed an agreement towards this goal

[Source- Economic Times- 02 Aug 2010]

State-Rescued Royal Bank of Scotland Returns to Profit

Royal Bank of Scotland, rescued by the British taxpayer at the height of the financial crisis, scraped into profit during the first half of 2010, its latest earnings statement showed. RBS said it made a net profit of nine million pounds (11 million Euros, 14 million dollars) in the six months to the end of June compared to a loss after tax of 1.042 billion pounds in the first half of 2009. The bank, which is 83-percent owned by the taxpayer, edged

into profit as write-offs from bad loans narrowed sharply.

The European commission had ordered RBS to sell assets in return for receiving state aid.

[Source- Economic Times-06 Aug 2010]

Credit Suisse Licensed to Establish a Bank Branch in India

Credit Suisse said that it has received a license from the Reserve Bank of India to establish a bank branch in Mumbai. This license enables Credit Suisse to substantially expand the range of services it offers in the Indian market. The Mumbai bank branch will accept deposits and use its balance-sheet to provide financing to clients, complementing the capabilities of Credit Suisse's non-bank financial company in India. The award of a license to establish a bank branch follows

the RBI's in-principle approval in March of Credit Suisse's application to enter the banking industry in India.

Credit Suisse is active in wealth management, investment banking and asset management in India, serving high net worth, corporate and institutional clients.

[Source- Economic Times- 12 Aug 2010]

Venture capital

Catamaran's SKS Investment Profit More Than Trebles in 6 mths

The Infosys Technologies chairman and chief mentor NRNarayanaMurthy-backed venture capital fund Catamaran Ventures has made a mark-to-market profit of about Rs 64crore in just six months by its investment in the microfinance firm SKS microfinance. Catamaran was

roped in as a pre-IPO investor for the country's largest microfinance firm SKS microfinance, which raised nearly Rs 1,654 Crore through its mega initial public offering earlier this week.

The country's largest microfinance firm will use the IPO proceeds to meet its future capital needs. Founded by VikramAkula, a US national, SKS is backed by several big private equity players, including sequoia capital.

[Source-Business Standard- 04 Aug 2010]

GMUnit Invests \$5 MN in Electric Car Start-up

General Motors' venture capital unit is buying a minority stake in electric car start-up Bright Automotive to advance the development of fuel-efficient vehicle Technologies. GM and Indiana-based Bright

automotive said they have agreed to pursue a strategic partnership under which GM will invest \$5 million to help accelerate Bright's production of its idea plug-in hybrid commercial vehicle.

GM ventures provided funding to Bright this week, and the companies intend to complete the formal agreements later this year. Upon completion of the agreements and other terms, GM ventures will have a minority stake in bright, and Bright will have access to GM technologies, and advanced engine and transmission systems, for its vehicle.

[Source-Business Standard- 04 Aug 2010]

GovtConsidering Venture Capital Fund for Drug R&D

The government said it is examining a proposal for

setting up a venture capital fund to promote drug discovery in India. The Department of Pharmaceuticals is in the process of examining a proposal to set up a venture fund for promoting pharma discovery and innovation, minister of state for chemicals and fertilizers Srikant Kumar Jena said in a written reply to the Lok Sabha. The country spends about Rs 2,000 Crore

every year on research & development activities. While the government contributes Rs 500 Crore to this, the rest comes from the private sector.

The proposed funding of Rs 10,000 Crore, which includes substantial contribution from the private pharma industry under the public private partnership (PPP) model, is

likely to bring about a favourable environment for drug innovation in the country and to make India a hub for new drug discoveries.

[Source- Economic Times- 12 Aug 2010]

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