

# RNM ALERT

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U.N. Marwah

Dear Readers,

RNM celebrated its Founders Day on June 25 with a *SaiBhajan* which coincides with the birthday of Late Mr. R.N. Marwah, Founding Partner. Further, it is our pleasure to inform you that Mr. D.R. Bahl, Partner has been appointed as the President of the Rotary Club of Delhi for the year 2010-11. The season for tax return filing has started with individual tax returns being due by July 31, 2010 and all readers are advised to commence the work well in advance to avoid month end pressure.

The provisions relating to service tax in the Finance Act, 2010 shall come into force from the 1st day of July, 2010 and all readers are advised to take cognizance of the same.

The final draft of the new Direct Tax Code (DTC) has been released by the Government, which makes substantial changes from the earlier draft. The new Code is silent on the IT slabs which were very liberal in the first draft. The popular savings- EPF, PF, PPF will not be taxed at any stage and the MAT on book profits, not gross assets are some of the changes made in the new code, which had faced strong opposition in the earlier draft. However, the issues of Controlled Foreign Corporation (CFC) rules and taxability of FII income as capital gains remain.

The new benchmark lending regime, called Base Rate to be introduced wef July 1, 2010 will benefit the majority of the borrowers by bring in more transparency in the sector. Large corporates using cheaper short term funds presently may be adversely affected and may shift to Commercial Paper (CP) market instead. With the largest bank of the country, SBI having announced a Base Rate of 7.5% all other PSU banks are expected to be in the similar range with a 50 to 100 basis point variation.

Regards,

**U.N. Marwah**

For and behalf of the RNM Alert Editorial Board

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## DIRECT TAX

### Ø Case Laws

#### *Deemed Dividend*

#### **S. 2(22)(e) : Deemed dividend - Receipts in the ordinary course of business**

Receipts which are in the ordinary course of business cannot be treated as deemed dividend.

[ACIT vs. Sunil Chopra (2010) 2 ITR 469 (Trib.) (Delhi)]

#### *Profits from Business*

#### **S. 37(1): Exchange rate fluctuation**

Assessee maintained accounts on mercantile system, loss claimed by the assessee on account of fluctuation in the rate of foreign exchange as on the date of balance sheet in

respect of loans taken for revenue purposes. Held allowable expenditure under section 37(1), notwithstanding the fact that the liability had not been discharged.

[Oil & Natural Gas corporation Ltd. vs. CIT (2010) 322 ITR 180 (SC)]

#### **Sec 37**

Keyman insurance paid for partner's life-premium is for the benefit of partners – deductible.

[CIT Vs B N Exports (2010)323ITR 178(Bom)]

#### **[Sec 32]**

Closure of business beyond control of the assessee – Depreciation is allowable.

[CIT Vs Blend Well Bottles P Ltd (2010)323ITR 18(Kar)]

#### **[Sec 37]**

Expenditure on glow sign boards –Not to be enduring nature –to be treated as revenue nature.

[DCIT Vs Orient Ceramics And Industries Ltd(2010)3ITR (Tri)246(Del)]

#### **S. 37(1): Business Expenditure– Deferred Revenue Expenses**

Whether where an assessee writes off certain expenditure in its books of account over a period of say five years, it must be allowed in its entirety in year in which it was incurred, if it is revenue expenditure, and is wholly exclusively incurred for purpose of business.

[ACIT vs. Core Healthcare Ltd. (2010) 37 SOT 383 (Ahd.)]

#### **S. 51: Capital or revenue - forfeited advance**

The amount received by an owner of property from the agreement holder as advance was forfeited for breach of contract. Such amount was held to be a capital receipt.

[S.Zoraster and Co v CIT (2010)322 ITR 35 (Raj )]

### *Procedure For Assessment*

#### **S. 142(1): Assessment - Notice - Jurisdiction - (S. 143(2), 144)**

Assessment made by the Assessing Officer who had no jurisdiction over the assessee, that too without issuing a notice under section 143(2) is null and void and is liable to be quashed.

[PravinBalubhaiZala vs. ITO (2010) 129 TTJ 373 (Mum.)]

#### **S. 143(2): Assessment - valid service of notice - (S. 282, 292BB)**

Notice under section 143(2), having been served on an employee of the assessee firm and not on any partner of the firm, who was not authorized to accept notices on behalf of the assessee, there was no valid service of notice, the assessment is invalid. For the Asst. Year 2003-04, section 292BB is not applicable though the assessee participated in the assessment proceedings.

[ACIT vs. Vision Inc. (2010) 37 DTR 263 (Del.)(Trib.)]

#### **[Sec 148] - Reopening**

Reopening of the case based upon the Information contained in Investigation Report is bad in law.

[CITvs.SFIL STOCK BROKING LTD (Del.)ITA No. 1056/2009 andCITvs.Dr.(Mrs.)KiranGarg (Luck)ITA No. 161/2005]

#### **S. 158BC: Block assessment-natural justice right to cross examination**

Where oral evidence of any party is sought to be used against an assessee, it is necessary that information relating to such statement or the copy of deposition should be furnished to the assess with opportunity to cross examination of the deponent, if required by the assessee. If it is not done, it is violation of principle of natural justice;hence order will be bad in law.

[CIT v Ashwani Gupta (2010) 322 ITR 396 (Del. )]

#### **[Sec 201(1A)]**

Initiated any TDS proceeding after 4 years from the end of the financial year –Barred by limitation.

[CIT Vs Hutchison Essar Telecom Ltd(2010)323ITR 230(Del)]

### *Penalties*

#### **S. 271(1)(c) : Concealment -estimate of income**

An assessee can never be held to be guilty of non disclosure of income which is determined by applying the provisions of section 40A (2) (b), because form in which return of income is to be filed by corporate assessee does not contemplate any disclosure of income earned by assessee which could be subject to scrutiny under section 40A (2) (b). Provisions of section 271(1) (c), are not attracted to cases where income of an assessee is assessed on as estimated basis.

[**Jhavar Properties (P) Ltd. vs. ACIT (2010) 123 ITD 429 (Mum.) 109]**

#### **S. 271(1)(c) : Concealment - withdrawal of claim**

When claim for deduction under section 80HHD was withdrawn prior to assessment, levy of penalty under section 271(1)(c), was not justified.

[**Banyan Tours & Travels (P) Ltd. vs. ITO (2010) 129 TTJ 422 (Mum.)**]

### *Search & Seizure*

#### **[Sec 153A]**

Before invoking provisions of section 153A it would be necessary to comply with provisions contained under section 132(1)

The warrant of authorization u/s 132 was issued in the name of “K. M. Shah Charitable Trust, Mansukhbhai K. Shah“. This cannot be regarded as a warrant of authorization issued in the name of assessee in his individual capacity. The search cannot be regarded as conducted against the assessee

in his individual capacity. The assessee’s name appears in the warrant and Panchnama as the Managing Trustee of the Trust and **not in his individual capacity**. When a warrant is issued in joint names, an assessment in individual capacity/status is invalid (**Vandana Verma** (All ) followed). Consequently, the s. 153A proceedings were invalid.

[**Dr. MansukhKanjibhai Shah vs. ACIT (ITAT Ahmadabad) [2010]5 taxmann.com 59 (Ahd. - ITAT)**]

### *Capital Gains*

#### **S. 45: Transfer of land to developer –exemption -(S. 54EC)**

Transferring development right to developer in Asst. Year 2000-01 would accrue capital gains and sale of flat in the

Asst. Year 2005-06 will be long term capital gain which is eligible for exemption under section 54EC.

[ITO vs. VikashBehal (2010) 36 DTR 385 (Kol.)(Trib.)]

[Sec. 50C]

**S. 50C does not apply to “rights” in land & building like tenancy rights**

S. 50C does not apply to all capital assets but only to “land or building”. A **tenancy right is not “land or building”** (It is “rights” in building). Consequently, s. 50C has no application and the capital gains have to be computed on the basis of the actual consideration and not the stamp duty value.

[KishoriSharadGaitonde vs. ITO (ITAT Mumbai)]

### *International Taxation*

### **S.9 (1)(vii): Fees for technical services**

Fees for technical services, even if rendered outside India, are taxable. [AshapuraMinichem vs. ADIT (ITAT Mumbai)]

## Ø Article

### *The New Direct Tax Code*

As proposed to be amended by the revised discussion paper, the Indian Government is seeking to initiate radical tax reforms by proposing to enact a new Direct Tax Code which will replace the existing Income-tax Act with effect from 1st April, 2011 i.e. w.e.f.. F.Y. 2011-12.

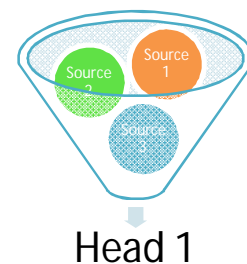
The Code seeks to combine the law relating to all direct taxes i.e. Income tax and Wealth-tax under one roof. The proposed DTC has been designed with the objective of simplification

of the provisions of tax laws by having a fresh look at the provisions of the Act.

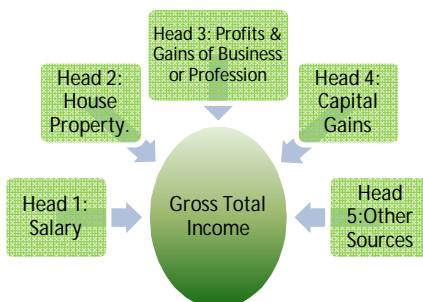
The Direct Tax Code seeks to take a fresh look at the taxation of all heads and sources of income. In the existing Income-tax Act, the entire mechanism of taxation revolves around various heads of income under which there would be different sources of income.

This is graphically depicted as under:

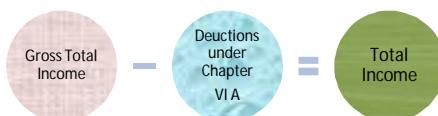
#### FIRST STEP



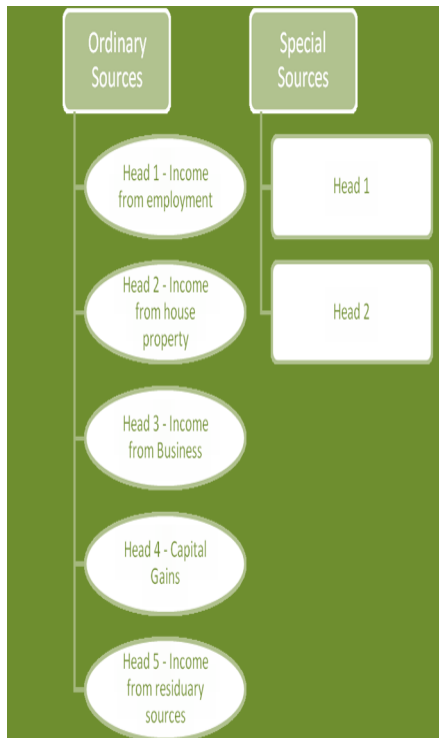
#### SECOND STEP



**THIRD STEP**

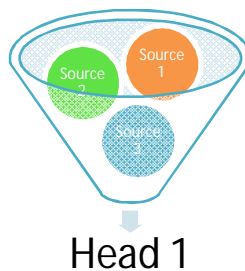


The new DTC, there is a new schema for computing income. First, of all, the sources of income are divided into two categories – Ordinary Sources and Special Sources. Under each Source, there would be different Heads of Income. And under each Head of Income, there could be various Sources of Income. This can be graphically depicted as under:

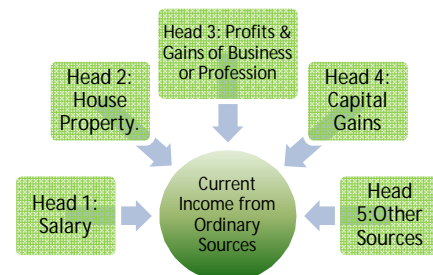


Following are the steps for computing income under the new Direct Tax Code:

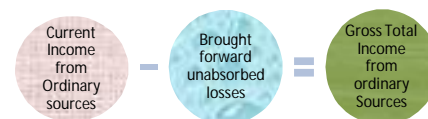
**FIRST STEP**



**SECOND STEP**



**THIRD STEP**



**FOURTH STEP**

The abovementioned Steps 1 to 3 would also be applicable for Income from Special Sources. At the end of the Step 3, one would have the Gross Total Income from Special Sources. The aggregate of this gross total income for all the special sources would constitute the Total Income from Special Sources. Thereafter, the following step needs to be followed:



# INDIRECT TAX

## Customs, Central Excise & Service Tax

### Ø Case Laws

#### *Clearance of The Used Capital Goods On Payment Of Duty On Depreciated Value*

In this matter the Appellant have paid duty on the transaction value on the capital goods at the time of clearance of the same after about ten years of use. The Appellant states that in a number of cases, the Tribunal has allowed clearance of the used capital goods on payment of duty after taking into account the depreciation to the extent of 2.5% per quarter.

The Tribunal held that the appellants are required to pay duty only on the depreciated

value of the used capital goods and further that the depreciation should be calculated at the rate of 2.5% per quarter.

[VeejayLakshmi Textiles Ltd. V Commissioner Of C.EX., SALEM, 2010(254) ELT 101(Tri-Chennai)]

#### *Special Lower Price Is Valid For Calculation of Excise Duty*

The allegation by the department was that the appellants have sold the impugned retreading machineries to their franchisee holders at a lower price. The appellants submitted and corroborated with the documents that a lower price is allowed to such buyers as they make prompt payments. The Tribunal held that

there is no reason for non-acceptance of the value adopted by the appellants for sales to their franchisee holders.

[Elgi Tread (India) Ltd. V Commissioner Of C.Ex., Coimbatore, 2010(254) ELT 100(Tri-Chennai)]

#### *Excise Duty on Waste and Scrap Material on Transaction Value*

The appellant being an EOU had imported the impugned blades for use in the machines for cutting granite logs which were exported after such cutting. The blades become unusable and scraps after a number of use and these have been sold outside in the DTA as scrap and duty on the same has been **paid on**

**transaction value.** He challenges the duty demanded by the Department holding that the duty should have been paid **on depreciated value of the blades.**

The Tribunal found that Condition No. 7 of the Notification No. 53/97-Cus, dated 3-6-1997 would govern clearance of rejects, waste and scrap material arising in the course of manufacture in an EOU. According to the said condition, duty is payable under Section 3 of the Central Excise Act, 1944. Such **payment has obviously to be made with reference to the transaction value** under section 4 of the Act.

[**Bannari Amman Sugars Ltd. V Commissioner Of C.EX., Salem, 2010(254) ELT 98(Tri-Chennai)**]

***Notification No 59/98-ST not admissible to Chartered Accountant's Service for certification of income***

***from international transactions***

**In this matter the Tribunal held that exemption under Notification No 59/98-ST dated 16.10.98 is not admissible to Chartered Accountant's Service for certification relating to computation of income from international transactions as required under Section 92E and Rule 10 E of the Income Tax Act, 1961/ Rules.** The Tribunal found that the certification follows transfer pricing audit. Therefore, the certification in question will clearly fall under Audit/Certification Services even as per the clarification dt. 7.10.1998 issued by the Ministry of Finance. The verification of the books of accounts precedes issue of a certificate and such verification will fall within the scope of “accounting & auditing” function.

[**Price Waterhouse Vs Commissioner Of Service Tax, Chennai 2010-TIOL-662-CESTAT-MAD**]

***Sec 76 And 78 Mutually Exclusive and Penalty under Both Sections Can Be Imposed Simultaneously***

The only issue involved in this case is as to whether penalty under Section 76 and Section 78 can be imposed simultaneously,

The Tribunal held that the issue involved in this case stand settled in favour of the Revenue in the case of *Asstt. Commissioner of Central Excise vs Krishna Poduval reported in 2006(1) STR 185 (Ker.) = (2006-TIOL-77-HC-KERALA-ST)* and also the judgment of the Tribunal in the case of *Bajaj Travels Ltd. vs Commissioner of Central Excise, Chandigarh reported in 2009(16)STR.183(Tri.-Del.) =*

**(2009-TIOL-1063-CESTAT-DEL)** and held that Sec 76 and 78 are mutually exclusive and penalty under both the Sections can be imposed simultaneously. **[PENALTY]**

[CCE, Chandigarh Vs M/S Cater To Cater Enterprise, 2010-TIOL-631-CESTAT-DEL]

***Principal Manufacturer Entitled To Avail Credit of Service Tax Paid By Their Job Worker***

The Tribunal held that the principal manufacturer was entitled to avail credit of the service tax paid by their job worker. The Tribunal rejected the Revenue's contention that, as the job worker was not required to pay service tax by virtue of exemption Notification and therefore the principal manufacturer was not entitled to

take credit of any service tax paid by the job worker.

According to one of the well-established tenets of judicial discipline, where there are contradictory decisions of coordinate benches, the later one would prevail

[Multi Organics Pvt Ltd Vs Commissioner Of Central Excise, Nagpur,]2010-TIOL-621-CESTAT-MUM]

***Laying Of Pipelines Is Not Covered Under “Erection, Commissioning And Installation Service” So As To Attract Service Tax***

In this case the Tribunal found that the issue in dispute has been considered in detail in *Indian Hume Pipe Co. Ltd. Vs CCE - 2008 (12) STR 363* =(2008-**TIOL-1665-CESTAT-MAD**)wherein the Tribunal has held that laying of pipelines is

not covered under “Erection, Commissioning and Installation Service” so as to attract service tax. This decision was cited by the assessee before the adjudicating authority who, however, chose not to follow on the ground that an appeal against the said decision has been filed. We are informed that the appeal filed by Revenue against the Tribunal's decision in *Indian Hume Pipe Co. Ltd. (supra)* is pending before the apex court and operation of the Tribunal's order has not been stayed. Since the issue stands covered by the earlier decision cited supra, following the same, we set aside the impugned order and allow the appeal.

[A Sekar Vs Commissioner Of Central Excise, Trichy2010-TIOL-620-CESTAT-MAD]

***Individuals Not Subject To Service Tax Under GTA Service***

**The Tribunal in this matter held** that transportation undertaken by individuals owning and operating lorry and trucks is not subject to service tax as in these cases services has not been provided by Goods Transport Agency Service.

[M/s K M B Granites Pvt Ltd Vs CCE, Salem, 2010-TIOL-611-CESTAT-MAD]

## Ø Latest Notification/ News

### *Off-Site Employees of SEZ Permitted To Work From Home*

In partial modification of the instruction No. 55 dated 5<sup>th</sup> May, 2010, it is clarified that off-site employees of SEZ may be permitted to work from home or from place outside the SEZ. It is also clarified that IT units in DTA can carry out their job-work in a SEZ unit by following the procedure as laid down in Rule 43 of SEZ Rules, 2006.

[M.C. & I. (D.C.), SEZ Instruction No. 58, dated 21-5-2010, Department of Commerce]

### *Export of Exempted Goods Under Bond Not Allowed*

CBEC has made an amendment in the Notification No. 42/2001-Central Excise (N.T.) dated 26-06-2001 to the effect that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred percent export oriented undertaking, shall not be allowed under this notification.

[Notification No. 24/2010-C.E.(N.T.), dated 26-5-2010]

## COMPANY LAW & SEBI

### Ø Latest Notification/ News

#### *Company Law Settlement Scheme, 2010 & Easy Exit Scheme, 2010*

The Ministry of Corporate Affairs has introduced the following two Schemes with effect from 30-5-2010:

**“Company Law Settlement Scheme, 2010”** giving opportunity to the defaulting Companies to enable them to make their default good by filing belated documents and to become compliant in future.

The Scheme has come into force on the 30th May, 2010 and shall remain effective up to 31st August, 2010.

Under the scheme, the Company shall pay statutory filing fees as prescribed under the Companies

Act and rules made there under along with an additional fee of 25 percent of the actual additional fee i.e. there shall be a waiver of 75% of the actual additional fee.

[General Circular No. 1 /2010 F. No. 2/7/2010-CL V issued by Government of India, Ministry of Corporate Affairs Dated the 26th May, 2010]

**“Easy Exit Scheme, 2010”** giving opportunity to the defunct companies to get their names struck off from the register under Section 560 of the Companies Act, 1956.

The Scheme shall come into force on the 30th May, 2010 and shall remain effective up to 31st August, 2010.

[General Circular No. 2 /2010 F. No. 2/7/2010-CL V issued by Government of India, Ministry of

Corporate Affairs Dated the 26th May, 2010]

#### *New Rule for initial & continuous listing requirement of 25% of capital with public*

The Securities Contracts (Regulation) Rules 1957 provide for the requirements which have to be satisfied by companies for the purpose of getting their securities listed on any stock exchange in India. A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation. Accordingly, the

Finance Minister in his Budget speech for 2009-10, inter- alia, proposed to raise the threshold for non- promoter, public shareholding for all listed companies. To implement the Budget announcement the Securities Contracts (Regulation) (Amendment) Rules, 2010 has been notified vide Press Release F.No.5/35/2006-CM dated 4th June 2010 through Notification.

As per Notification:

- a) The minimum threshold level of public holding will be 25% for all listed companies.
- b) Existing listed companies having less than 25% public holding have to reach the minimum 25% level by an annual addition of not less than 5% to public holding.
- c) For new listing, if the post issue capital of the company

calculated at offer price is more than Rs. 4000 crores, the company may be allowed to go public with 10% public shareholding and comply with the 25% public shareholding requirement by increasing its public shareholding by at least 5% per annum.

- d) For companies whose draft offer document is pending with Securities and Exchange Board of India on or before these amendments are required to comply with 25% public shareholding requirement by increasing its public shareholding by at least 5% per annum, irrespective of the amount of post issue capital of the company calculated at offer price.
- e) A company may increase its public shareholding by less than 5% in a year if such

increase brings its public shareholding to the level of 25% in that year.

- f) The requirement for continuous listing will be the same as the conditions for initial listing.
- g) Every listed company shall maintain public shareholding of at least 25%. If the public shareholding in a listed company falls below 25% at any time, such company shall bring the public shareholding to 25% within a maximum period of 12 months from the date of such fall.

*Mutual Fund Trustees to report the status of investor grievance redressal*

SEBI has received feedback from investors and Investors' Associations to improve transparency in the 'grievance redressal mechanism'. Based on the same, transparency in 'grievance redressal' is identified as a key area to augment investor protection. It is envisaged that transparency will also improve the general functioning of the market by providing investors the wherewithal to make an informed choice.

Accordingly, it has been decided that Mutual Funds shall henceforth disclose on their websites, on the AMFI website as well as in **their Annual Reports**, details of investor complaints received by them

from all sources. The said details should be vetted and signed off by the Trustees of the concerned Mutual Fund. The format for the aforesaid disclosure is given as Annexure to this Circular.

The Mutual Funds are accordingly advised include the report in their annual reports, as part of the **Report of the Trustees**, beginning with the annual report for the year 2009-10.

[Source: Cir / IMD / DF / 2 / 2010 dated May 13, 2010]

*SEBI Credit Rating Guidelines with provisions for unsolicited credit ratings & structured finance product provision*

Effective use of credit ratings by the users is crucially dependent upon quality and quantity of disclosures made by the Credit Rating Agencies (CRAs).

CRA should publish information about the **historical default rates** of CRA rating categories and whether the default rates of these categories have changed over time, so that the public can understand the historical performance of each category and if and how rating categories have changed, and be able to draw quality comparisons among ratings given by different CRAs.

The default rates shall be calculated in the following manner:

- (i) One Year Default Rate is the weighted average of default rates of all possible 1 year static pools in the 5-year period.
- (ii) Cumulative Default Rate: The cumulative default rate (CDR) represents the likelihood of an entity that

was rated at the beginning of any multi-year period defaulting at any time during the multi-year period.

- (iii) 3 year cumulative default rate shall be computed as:  
3 year CDR for rating category X = No. of issuers which defaulted over the 3 year period / No. of issuers outstanding at the beginning of the 3 year period.

In case of **unsolicited credit ratings**, i.e. the credit ratings not arising out of the agreement between a CRA and the issuer, credit rating symbol shall be accompanied by the word “UNSOLICITED” in the same font size.

### *Obligations in respect of Rating of Structured Finance Products*

A CRA may undertake rating of structured finance products, namely, instruments / pay-outs resulting from securitization transactions (under SARFAESI Act, 2002 read with SEBI (POLSDI) Regulations, 2008). In such cases, apart from following all the applicable requirements in case of non-structured ratings, few other additional requirements shall also be complied with. The rating symbols shall **clearly indicate** that the ratings are for structured finance products. A CRA shall also disclose at least once in every six months, the performance of the rated pool, i.e., collection efficiency, delinquencies of the Structured Finance Products.

[Source:SEBICIR/MIRSD/CRA/6/2010 dated 3rd May 2010]

### *FAQ on Listing of securities of small and medium enterprises in India*

#### **What is the legal framework for public offering of securities by SMEs?**

The legal framework for the public offering of securities by SMEs is primarily contained in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”), SEBI press release dated November 9, 2009 and SEBI circulars dated April 26, May 17 and May 18, 2010.

#### **Who can issue securities under the legal framework for public offering of securities by SMEs?**

An issuer whose post-issue face value capital does not exceed

ten crore rupees can issue securities in accordance with Chapter XA of the ICDR Regulations. An issuer whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees can also issue securities in accordance with Chapter XA of the ICDR Regulations. The second category of issuer may migrate its securities from the SME exchange to the 'Main Board' (a recognized stock exchange having nationwide trading terminals, other than SME exchange) if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing as laid down by the 'Main Board'. Further, an issuer listed on a recognized stock exchange other than a SME exchange and

whose post-issue face value capital pursuant to further issue of securities of the same class does not exceed ten crore rupees will have option to make further issue of specified securities of same class in accordance with Chapter XA of the ICDR Regulations provided that its entire specified securities of the same class shall be listed on the SME exchange.

#### **What is a SME exchange?**

Regulation 106B (1) (c) of the ICDR Regulations defines SME exchange to mean a trading platform of a recognized stock exchange having nationwide trading terminals permitted by the SEBI to list the specified securities issued in accordance with chapter XA of the ICDR Regulation and includes a stock exchange granted recognition for this purpose but does not

include the 'Main Board'.

#### **What are the important differences in the process of offering of securities under the SME legal framework as opposed to offering of securities under the non-SME legal framework of the ICDR Regulations?**

The SMEs issuers, making a public issue or a rights issue, are not required to file the draft offer document with SEBI.

While filing the prospectus with the SME exchange, they are required to file a copy with the SEBI on which SEBI will not issue any observation.

The underwriting shall be for the entire hundred percent of the offer through the offer document and shall not be restricted upto the minimum subscription level.

The merchant banker shall underwrite at least fifteen

percent of the issue size on his or their own account.

The minimum application size in terms of the specified securities shall not be less than one lakh specified securities.

Further no allotment shall be made pursuant to any initial public offer if the number of prospective allottees is less than fifty.

Further, SEBI has made the process of market making mandatory in a SME public offerings and the responsibility is on the merchant banker to ensure compulsory market making through the stock brokers of the SME exchange for a minimum period of three years from the date of listing of the specified securities. Pursuant to a SEBI circular dated April

26, 2010, SEBI has laid down the norms for the market makers involved in the process of market making such as registration of the market makers, the obligations and responsibilities of the market makers, risk containment measures and monitoring of market makers etc.

**What are the differences in the model listing agreement for listing on a SME exchange upon comparison to the listing requirements in Main Board?**

Some relaxations are provided to the issuers whose securities are listed on SME exchange in comparison to the listing requirements in Main Board, which inter-alia include the following:

- i. Companies listed on the SME exchange may send to their shareholders, a statement containing the salient features of all the documents, as prescribed in sub-clause (iv) of clause (b) of proviso to section 219 of the Companies Act, 1956, instead of sending a full annual report;
- ii. Periodical financial results may be submitted on “half yearly basis”, instead of “quarterly basis” and
- iii. SMEs need not publish their financial results, as required in the Main Board and can make it available on their website.

## MISCELLANEOUS LAWSUPDATE

### Ø Latest Notification/ News

#### *Proposed amendment in Indian Stamp Act, 1899 to cover M&A*

The Department of Revenue, Ministry of Finance, has released the draft Amendment Bill (“Bill”) containing the proposed amendments in the Indian Stamp Act, 1899 (“Act”). The Bill has been sent to all the State Governments for obtaining their views and the same has also been posted on the Finance Ministry's website i.e. [www.finmin.nic.in](http://www.finmin.nic.in) for obtaining the suggestions/ comments of interested stake-holders.

One of the key proposals of the said Bill is, inter-alia, to enlarge the scope of application of the

Act by explicitly levying stamp duty on every order of the Court/Tribunal sanctioning the scheme of amalgamation or reconstruction of companies, including banking companies, by which property is transferred inter vivos.

To attain a quietus, the definition of the expression “conveyance” is proposed to be amended so as to include in its scope every such order of High Court/Tribunal under section 394 of the Companies Act, 1956 sanctioning the scheme of amalgamation or reconstruction of companies including the order made by Reserve Bank of India in respect of amalgamation or reconstruction of banking companies under section 44A of the Banking Regulation Act, 1949. An explanation is also proposed to

be added to the term “conveyance” in order to make the transfer of property by a co-owner to another co owner, chargeable with the duty of conveyance unless it is an instrument of partition. The rate of stamp duty on conveyance as proposed is 5% of the market value of the property which is the subject matter of conveyance. There is no guidance provided as to how the market value of the property, being an undertaking, will be arrived at.

The said Proposal is of vital importance in any amalgamation, merger or demerger transaction.

#### *Effective Date for Revision of Gratuity Amendment Act to Rs. 10 Lakhs*

The Payment of Gratuity (Amendment) Act, 2010 has been notified in the Official Gazette on 18th May 2010, amending the Payment of Gratuity Act, 1972 with revision in maximum ceiling from Rs. 3.5 lac to Rs. 10 lakhs.

**Revised ESI limit  
Rs.15,000 (not Rs.10,000)  
for employees/workers  
w.e.f. 1st May 2010**

Ministry of Labour & Employment has made Employees State Insurance Act, 1948 read with ESI (Central) (Amendment) Rules, 2010 applicable to employees whose wages do not exceed Rs. 15,000/- (Fifteen Thousand Only). The said notification shall come into effect from 1st May 2010.

[Notif G.S.R. 394(E), dated 20th April, 2010 ]

**Employee's definition  
under Gratuity Act  
widened to include all  
types of work**

The Payment of Gratuity Act, 1972 definition of the term "employee" under Section 2 got widened. It is no more the old definition of persons employed in administrative or managerial capacity. The new definition is as follows:-

Employee's means any persons [NOT being an Apprentice] employed for wages in any kind of work (manual or otherwise) or in connection with work of factory, mine, plantation, oilfield, railway company, port or other establishment.

*So, even teachers are eligible for gratuity now overriding the famous Ahmadabad Private Primary Teachers Association case.*

[Source: Payment of Gratuity (Amendment) Act, 2009]

**Scope widened of the  
Workmen's Compensation  
Act, 1923**

Workmen's Compensation Act is now the Employees Compensation Act, 1923 and the definition of 'employee' includes clerical employees & casual employees also. Further,

- (i) the minimum compensation limits on no-fault basis are increased to Rs.1,20,000 & 1,40,000 (erstwhile limits being Rs. 80,000 & 90,000).
- (ii) under the maximum compensation limit, the monthly wage limits of Rs.4,000/ is removed. hence, the maximum compensation can go UPTO 50% of Total Monthly

Wages now, irrespective of limits.

(iii) Funeral expenses limit extended to Rs.5000 (from Rs.2,500)

(iv) The employee shall be reimbursed the actual (full) medical expenditure incurred by him for treatment of injuries caused during the course of employment.

(v) Time limit for disposal of cases relating to compensation introduced.

The Commissioner shall dispose of the matter relating to compensation within 3 months of reference.

**Old Definition:** "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is....

**New definition: Section 2**

“(dd) “employee” means a **person**, who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office

of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in

Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been” injured shall, where the employee is dead, include a reference to his dependants or any of them.

[Source: The **Workmen’s Compensation (Amendment) Act, 2009]**

# FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATION

## *Realisation of Export Proceeds*

The RBI had relaxed, subject to annual review, the period of realisation and repatriation to India of the amount representing the full export value of goods or software exported, from six months to twelve months from the date of export.

The issue has since been reviewed and it has been decided, in consultation with the Government of India, to extend the above relaxation up to March 31, 2011.

[Source: A.P. (DIR Series) Circular No. 57 June 29, 2010]

## *New Directions for Compounding of Contraventions*

In supersession of the earlier A.P. (Dir Series) Circular No 31 dated February 1, 2005 the RBI has issued this new circular dealing with the

updated procedure for compounding of contraventions under FEMA.

The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- (i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- (ii) the amount of loss caused to any authority/agency/exchequer as a result of the contravention;
- (iii) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- (iv) the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;

(v) contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and

(vi) any other factor as considered relevant and appropriate.

[Source: A.P. (DIR Series) Circular No. 57 June 29, 2010]

## *New Directions for regulation of Non Convertible Debentures*

The RBI has issued the Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010 which shall come into force with effect from August 02, 2010. A corporate shall be eligible to issue NCDs if it fulfills the following criteria, namely,

- i. the corporate has a tangible net worth of not less than Rs.4 crore, as per the latest audited balance sheet;

- ii. the corporate has been sanctioned working capital limit or term loan by bank/s or all-India financial institution/s; and
- iii. the borrowing account of the corporate is classified as a Standard Asset by the financing bank/s or institution/s.

An eligible corporate intending to issue NCDs shall obtain credit rating for issuance of the NCDs. The minimum credit rating shall be P-2 of CRISIL or such equivalent rating by other agencies.

[IDMD.DOD.09/11.01.01(A)/ 2009-10 dated June 23, 2010]

*Currency Travel Limit enhanced to USD 5000 for some countries*

Authorized Dealers and Full Fledged Money Changers are currently permitted to sell foreign exchange in the form of foreign currency notes and coins, up to USD 2,000 [*increased to USD 3000*] or its equivalent, to the travelers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States, without the

prior permission from the Reserve Bank (RBI).

Authorized Dealers and Full Fledged Money Changers may, as hitherto, continue to sell foreign exchange in the form of foreign currency notes and coins up to **USD 5,000** or its equivalent to the travelers proceeding to Iraq or Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States.

[Source: A.P. (DIR Series) Circular No. 50 May 4, 2010 A.P. (FL Series) Circular No. 7 dated 4th May 2010]

## CORPORATE FINANCE

### Ø Latest News

#### Private Equity

##### **Avigo Capital Closes Third Fund at \$ 240 Million**

Avigo Capital Partners, a Delhi-based private equity fund focused on mid-market companies, has closed its third fund, Avigo SME Fund III, at \$240 million. The focus areas of the third fund will be industrial services, manufacturing, infrastructure-related businesses and emerging sectors like digital media, telecom services and specialized retail.

[Source| Economic Times| 25th June, 2010]

##### **IL&FS PE arm to hit road to raise \$ 400 million fund**

IL&FS Investment Managers Ltd (IIML) is set to gain from the changed fund-raising

scenario as it plans to raise its latest sector-agnostic fund, Tara India Fund IV.

The fund size is learnt to be in the range of \$300-400 million with an investment focus on areas such as infrastructure, consumer services, manufacturing, information technology and pharmaceutical, healthcare service sectors.

[Source| Economic Times| 21st June, 2010]

##### **Trikona Trinity to appoint Indirect as Investment Manager**

Trikona Trinity Capital Plc, the AIM-listed real estate fund focused on India, is all set to appoint Ajay Primal Group-promoted Indirect Investment Management Company (Indirect) as its investment manager in India. Trikona Trinity, which has invested around £230 million in Indian Real Estate.

[Source| Financial Express| 18th June, 2010]

##### **Centum Learning Raises Rs. 40 cr from Mayfield India Fund**

Mayfield India Fund has announced Rs 40-crore investment in Centum Learning, a Bharti Group company operating in the higher education domain. Centum Learning has set up over 130 learning centers in 90 cities across India.

[Source| Economic Times| 16th June, 2010]

##### **SAIF Partners Ups Stake in IPO-Bound One97 Communications for \$20 million**

Asia-focused private equity firm SAIF Partners has increased its stake in One97 Communications by 10% even as the mobile value added services company prepares for its IPO. The PE firm has picked up stakes in a secondary transaction from Vijay Shekhar

Sharma, the founder and managing director.

[Source| Mint| 12th June, 2010]

### **VIT University To Raise UptoRs. 600 cr. To expand Campus**

Tamil Nadu-based VIT University, which is also popularly known as Vellore Institute of Technology, has hit the fund-raising trail as it looks to expand its upcoming campus in Chennai.

[Source| Business Standard| 10th June, 2010]

### **Warburg Pincus Invests \$ 85 Million in Metropolis Healthcare**

Private equity major Warburg Pincus is investing \$85 million (Rs 392 crore) in India's largest diagnostic laboratories chain Metropolis Healthcare Limited paving a way for an exit for ICICI Venture.

[Source| Business Standard| 9th June, 2010]

## **Merger And Acquisition**

### **Piramal Healthcare to buy assets of Canadian Firm BioSyntech**

Piramal Healthcare Ltd (PHL) has signed a definitive agreement to acquire Canada-based BioSyntech's assets for a consideration of C\$3.9 million (US\$ 3.82 million or Rs 17.4 crore). BioSyntech is a medical device company specializing in the development, manufacturing and commercialization of advanced

biotherapeuticthermogels for regenerative medicine (tissue repair) and therapeutic delivery.

[Source| Economic Times| 24th June, 2010]

### **BGR Energy May Forge50:50 JV with Hitachi Arm**

Japanese major Hitachi Group appears to be upping its ante in India. BGR Energy Systems, a heavy electrical equipment maker, may enter into an equity joint venture with a unit of Hitachi.

[Source| Mint| 20th June, 2010]

### **Hinduja Global Acquires UK-based BPO Firm**

Outsourcing service provider Hinduja Global Solutions Limited (HGSL) has, through its European subsidiary, acquired 100% stake in UK-based customer relationship management company, CarelineServices. Careline Services is a leading contact centre provider servicing more than 20 marquee customers across verticals such as government, FMCG, financial services, automobiles.

[Source| Hindu Business Line| 18th June, 2010]

### **PE-backed RSB Acquires European Firm**

RSB Transmissions, the Pune-based automotive component maker, has acquired a 70% stake in Mechanical Supplies International (MSI), e20-million Belgian construction equipment maker. RSB Transmissions, aRs 750-crore group, has 10 plants in India and one in the US.

[Source| Mint| 12th June, 2010]

## Venture Capital

### Nexus Venture Partners Puts Rs. 10 cr in Commodity Firm

Nexus Venture Partners has invested Rs 10 crore in SohanLal Commodity Management (SLCM), an agri-commodity logistics and procurement company based in Delhi.

SLCM provides comprehensive agri-commodity warehouse management and procurement solutions to farmers, processors, traders, agri-exchanges and government organizations across 70 locations and 12 states in India.

ICICI Investment Banking was the sole advisor to this transaction.

[Source| Economic Times| 20th June2010]

### Opus Capital & Helion Ventures Put \$ 4 million in follow on round in Jivox

Opus Capital and Helion Venture Partners have made follow-on investments of roughly \$4 million into Jivox, a

technology-focused online video advertising firm. The three-year-old firm caters to the online video advertising market in India and in the US.

Jivox works with most of the top brands in the automobile, financial services, electronics, travel & leisure and entertainment sectors in India. The firm's revenue model works on fee per impression. It books spots on most of the top online publishers in India, and also in the US, and works on revenue sharing basis in some cases.

[Source| Economic Times| 20th June, 2010]

### Reliance Venture invests \$ 5million in Bangalore's Gradatim IT

Reliance Venture Asset Management Ltd (RVAM, has invested \$ 5million an undisclosed sum in Gradatim IT Ventures India Pvt Ltd, a Bangalore-based company providing Business Process Utility (BPU) services to banking and insurance sector. Yes Bank was the sole advisor

to this transaction.

[Source| Economic Times| 20th June, 2010]

### Flipkart Raises Up to \$10 million from Tiger Global for online retail business

Flipkart Online Services Pvt Ltd, which runs the online retail firm Flipkart.com, has raised its second round of venture funding from New York-based investment firm Tiger Global Management. This development comes as Flipkart has expanded from being an online book retailer to offering products in movies, games and music.

[Source| Hindu Business Line| 20th June, 2010]

### Burwood Ventures Makes Grand Exit from eClerx

Burwood Ventures has signed off its investment in knowledge process outsourcing (KPO) firm eClerx in style. The investment firm, that had acquired 21% stake before the company went public in late 2007, is estimated to have exited with 'net returns

of 55x' in its five-year-old investment. Burwood encashed Rs 157Cr till date by putting in Rs 2.46Cr; making it one of the most profitable VC/PE deals in India.

[Source| Hindu Business Line| 20th June, 2010]

### **Battery Ventures to invest \$8.75 Million in Taggle**

Taggle Internet Ventures Pvt. Ltd, a Bangalore-based Internet company that offers an online group-buying platform, has received \$8.75 million funding commitment from Battery Ventures and Greylock Partners. Taggle plans to use the funding, which is based on milestones, on areas like

technology, marketing to drive traffic and a scale-up of its services.

[Source| Hindu Business Line| 20th June, 2010]

### **Headstart Ventures on road to create Rs. 25 cr. Angel Fund**

Headstart Ventures, a limited liability partnership firm founded by three technology enthusiasts and entrepreneurs, is creating a pure-play angel fund targeting a size of Rs 25 crore, to be raised from high net worth individuals. The fund targets sectors such as technology, communication, digital media and advertising and ICT-enabled healthcare and education solutions.

[Source| Mint| 20th June, 2010]

### **D.light Design Raises \$5.5M In Omidyar-Led Round**

D.light Design, which offers affordable solar energy and lighting solutions, has raised a series-B round of \$5.5 million, led by new investor Omidyar Network. D.light's solar lanterns replace toxic kerosene lamps, providing life-changing improvements in personal health and security, as well as enhanced productivity and access to information.

[Source| Mint| 22nd June, 2010]

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