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U.N. Marwah

Dear Readers,

With the due date for filing of Return of Income for Corporate assessee's, after extension upto October 15, having expired I am sure the Accounts & Finance Department of Indian Inc. would be a much more relaxed place.

I am pleased to inform you that Mr. Raghu Marwah, Managing Partner participated in the recently concluded Asian Regional Conference and the World Conference of the Geneva Group International (GGI) in Beijing, Peoples Republic of China from the 19th -21st October 2010 and 21st- 24th October 2010 respectively. As a key member of the International Tax Practice Group of the GGI he has co-authored a book titled the "International Tax and Business Guide" which was officially released at the Conference.

With the presence of the President of the United States of America in India, I am hopeful that the Indo-US trade and business would get a fillip, leading to greater mutual benefit to our economies.

The RNM Team would like to wish all its readers a very Happy Deepawali and may the festival of lights bring happiness and knowledge to every home.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

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DIRECT TAX

➤ Case Laws

Income from House Property

S. 24(1)(vi)

If Interest paid on original loan is allowable as deduction, then interest paid on second loan for repayment of original loan is also allowable.

[K.S.Kamalakaran v. Asst CIT (2010) 126 ITD 231 (Chennai)]

Profits & Gain from

Business & Profession

S. 32(1)(ii)

As per rules and bye-laws of Bombay Stock Exchange its membership card is an “intangible asset” on which depreciation can be claimed.

[Techno Shares and Stocks Ltd. V. CIT [2010] 327 ITR 323 (SC)]

S. 37: Capital or Revenue Expenditure

The contribution made by the assessee due to various business reasons, to participate in a scheme framed by High court, as a remedy to a perpetual public hazard, i.e. social cause, hence the expenditure incurred allowable as revenue expenditure.

[CIT v Jayendra Kumar Hiralal (2010) 327 ITR 147 (Guj)]

S. 37(1) – Capital or Revenue Expenditure

Assessee is a cardiologist purchased the second hand machines for use as spare parts to existing equipments is allowable as revenue expenditure.

[AswanthN.Rao v ACIT (2010) 326 ITR 188 (Karn)]

S. 40(a)(ia)

Since the assessee, a transporter, was not liable to get his accounts audited under section 44AB in the immediately preceding assessment year, he was not required to deduct tax at source under section 194C from the payments made by him and these payments could not be disallowed under section 40(a)(ia) on account of non-deduction of TDS.

[ITO v Dhirubhai Dajibahi Patel (2010) 133 TTJ (Ahd) (UO)]

Capital gains

S. 45:

The assessee had given possession and received the sale consideration in pursuance of the agreement dated March 1993. As the provisions of section 53A, of transfer of Property Act is attracted, the capital gains would accrue in the year of possession.

[D.Kasturi (Smt) v CIT (2010) 42 DTR (Mad) 288]

Deductions & Exemptions

S. 11: Charitable trust- Application of income- construction of hospital building

Assessee trust established for the purpose of running hospitals, nursing home etc, spending the income for construction of hospital building, is an application of income for the objects of running hospitals and entitled to exemption.

[CIT v MoolChandSharbati Devi Hospital Trust (2010) 41 DTR (All) 153]

S. 10(23C)(iiiab)

Where the objects & activities of the assessee institution are educational in nature & the revenue has not brought any material on record to show that the college account was having surplus or profit, year after year and the Revenue has not

disputed that surplus was only because of salary grant from the State Government and another grant from UGC, Revenue's plea that the college run by assessee was for profit motive cannot be accepted.

[Shree SaketMahavidyalayaSamiti v. DCIT (2010) 132 TTJ (Lucknow) (UO) 39]

S. 10(26AAA) & 264

In matters giving benefit to assessee, Department must avoid pedantic (obscure) approach. Amendment made retrospectively exempting the interest and dividend income of Sikkimese, the Court held that Commissioner should have condoned the delay in filing the application under section 264 and ought to have granted the relief.

[Danny Denzongpa vs. CIT (Bombay High Court) (www.itatonline.org)]

Minimum Alternate Tax

S. 115JB:

Interest under sections 234B and 234C cannot be charged, on the minimum alternative tax levied under section 115JB on the book profit.

[CIT v Narural Gems Ltd (2010) 327 ITR 269 (Bom)]

Deduction of Tax at Source

S. 201:

In the facts and circumstances of the case, as the matter is remitted to AO to examine a technical expert and to decide afresh, Revenue Department is not entitled to levy interest under section 201(1A) or to impose penalty for non-deduction of TDS for the reasons that there is no loss of revenue as tax has been paid by the recipient and the moot question involved in the case is yet to be decided.

[CIT v Bharti Cellular Ltd (2010) 44 DTR 190 (SC)]

Penalty

S. 271(1) (c):

Where the assessee had not shown in the return

the investment in mutual funds but accepted the amount of investment only when the AIR information on the investment of the assessee in the mutual funds, was brought to its attention, it cannot be said that he had voluntarily offered the amount. Levy of penalty in relation to the addition was justified.

[Charudutt H. Dangat v ITO (2010) 132 TTJ (Mumbai) 687]

Wealth Tax

S. 2(ea)(i):

Assessee having declared the income from the letting of the factory shed as “rental income” in its return which has been assessed accordingly and the occupant of the premises is purely that of the landlord and tenant, the factory shed is to be treated as an asset exigible to tax.

[Supreme Nonwovens Ltd v Asst CIT (2010) 43 DTR (Bom) 326.]

S. 2(ea):

Land on which construction not permitted not to be considered urban land hence the value of

land not includible in net wealth.

[Amrit Lal Jindal and sons (HUF) v WTO (2010) 327 ITR 161 (P&H)]

S. 17:

Report called for after completion of assessment. Not a ground for reassessment. Report called for during pendency of assessment but received after completion of assessment. Valid ground for reassessment.

[CWT v Sona Properties P. Ltd (2010) 327 ITR 592 (Bom)]

Tax Assessment, Search & Seizure

S. 133A:

On the basis of documents found during survey, AO made the additions without specifying the defects in books of accounts. Later on assessee reconciles the entire material recovered during survey with the return filed by the assessee. CIT(A) deleted the addition made by AO. ITAT and HC affirmed the order of CIT(A).

[CIT v. Diplast Plastics Limited [2010] 327 ITR 39 (P&H HC)]

S.68:

On finding that the explanation regarding creditors was false, addition of amount representing cash credits was justified.

[Mahavir Prasad v Income Tax Officer - [2010] 327 ITR 178 (P&H)]

S.68: Once summons were duly served on the creditors their identity is duly proved and the AO could not have drawn an inference against the assessee, without enforcing the attendance of the parties to whom summons were issued and served and without giving an opportunity to the assessee.

[ITO v Mayur Agarwal (2010) 133 TTJ (Agra) (TM) 1]

S. 4:

Amount was due to assessee in terms of royalty agreement. A dispute arises between parties and arbitration proceedings were pending. Held, there is no

accrual of income. Assessment only on completion of arbitration proceedings.

[FGP Ltd v CIT (2010) 326 ITR 444(Bom)]

S. 133A:

Confession made during survey is not conclusive and can be retracted (taken back).

[CIT vs. Dhingra Metal Works (Delhi High Court)]

S. 147:

If AO does not assess income for which reasons were recorded u/s 147, he cannot assess other income u/s 147.

[CIT vs. Jet Airways (I) Ltd (Bombay High Court)]

S. 148 & 143(2):

Notice under section 148 cannot be issued for making reassessment, when time limit is available for issue of notice under section 143(2) for making an assessment under section 143 (3).

[CIT v TCP Ltd (2010) 44 DTR (Mad) 31]

Tax Administration

Power to review is not an inherent power and it must be conferred by law either specifically or by necessary implications. High court has no power to review under the Income Tax Act, 1961.

[Deepak Kumar Garg v Commissioner of Income-Tax [2010] 327 ITR 448 (MP)]

S. 119(2):

CBDT has the power under section 119(2)(b) to condone the delay in filing the return having claim of carry forward of losses. Delay of one day was condoned.

[Lodhi Property Company Ltd v under secretary, Department of revenue. (2010) 234 CTR (Del) 99]

S. 254(2);

Decision of the Supreme Court or the Jurisdictional High Court is binding on the Tribunal, and therefore, constitutes an apparent error in the order. Accordingly, the subsequent law laid down by the Supreme court or the jurisdictional High

Court has to be considered for rectifying the mistake under section 254(2) of the Income Tax Act 1961.

[V.R.Chittanandam v Asst CIT (2010) 5 ITR (Trib) 258 (Chennai)]

International Taxation

S. 9(1)(vii): Income Deemed to Accrue or Arise in India – Fees for Technical Services

A Singapore resident company had PE in India, which provided information available in public domain to subscribers. The AO held that the income was fees for technical services (FTS) under the Income Tax Act and taxable on gross basis and not on net basis as claimed by the Tax payer under DTAA. The Tribunal held that the assessee can choose between DTAA and the Income Tax Act and tax authorities cannot thrust provisions of the Income Tax Act unless they are more beneficial.

[JCIT v Telerate (2010) TII 72 – Mum-Intl. (2010) (October) BCAJ P. 25.]

INDIRECT TAX

Customs, Central Excise & Service Tax

➤ Case Laws

Capital Goods used in mines

Mines if captive mines so as to constitute one integrated unit with concerned cement factory, Cenvat/ Modvat Credit available. Mines if not captive mines but supply to various other cement companies of different assessee's and goods used in mines outside factory of assessee, credit not available under appropriate Rules.

[Commissioner of C.Ex., Chennai V Madras Cement Ltd., 2010(257) ELT 321(SC)]

Tour Operator must possesses Permit

Tour Operator Service – For a person to be regarded as tour operator, he should possess requisite permit and vehicles operated as tourist vehicles – RTA certified that assessee's vehicles are not tourist vehicles – No evidence adduced by Revenue to

challenge veracity of certificate – Order of Appellate Commissioner setting aside tax demand upheld – Revenue appeal devoid of merits.

[CCE, Rajkot Vs M/s Bharat Travels (Dated: July 13, 2010), 2010-TIOL-1230-CESTAT-AHM]

House Keeping and Garden Maintenance are Input Services

Service tax paid on house keeping and garden maintenance service are input service - definition of 'input service' is wide enough to take in the services in question as they can certainly put the activities relating to the business - Tribunal decision in ISMT Ltd. Vs. CCE, Aurangabad 2010-TIOL-27-CESTAT-MUM following decision in Millipore India Ltd. Vs. CCE, Bangalore 2009-TIOL-490-CESTAT-BANG, relied upon – Order set aside and appeal allowed.

[M/s RaneTrw Steering Systems Pvt Ltd Vs CCE, Trichy (Dated:

April 26, 2010) 2010-TIOL-1146-CESTAT-MAD]

No Penalty on Amount Reversed Prior to Issue of SCN

Service Tax amount utilized by the assessee reversed prior to issue of the Show Cause Notice – Assessee is not liable to any penal action as the provisions of Section 73(3) are attracted.

[Spic Ltd Vs CST, Chennai (Dated: May 3, 2010) 2010-TIOL-1158-CESTAT-MAD]

Handling Charges or Administrative Expenses Not Taxable

Respondents have entered into a tripartite agreement with the Bank and the farmers under a statutory obligation on them and the amount which they have received is only handling charges or administrative expenses – Activity not covered under the category of 'Business Auxiliary Services' – Revenue appeal dismissed.

[CCE, Pune Vs M/s Bhima SSK Ltd (Dated: August 3, 2010) 2010-TIOL-1160-CESTAT-MUM]

Input Credit Regarding Banking Services

CENVAT Credit of service tax paid for construction of "Executive Staff Quarters" for the Bank – Credit is admissible as the input service includes "services used in the premises of a provider of output service".

[M/s The Lakshmi Vilas Bank Ltd Vs CCE, Trichy (Dated: April 9, 2010) 2010-TIOL-1165-CESTAT-MAD]

Tax Paid on Brokerage is Entitled for CENVAT Credit

Finished products were removed by the manufacturer after the broker had pointed out the buyers – since the assessee had availed the services of the broker before clearance of goods from the factory, service tax paid on brokerage is entitled for Cenvat credit.

[CCE, Nagpur Vs M/s Indorama Synthetics (I) Ltd (Dated: August 10, 2010) 2010-TIOL-1184-CESTAT-MUM]

➤ Latest Notification/ News

CENVAT is allowed on Inputs etc. for payment of excise duty on wires drawn from wire rods

Where an assessee has paid duty of excise on wires drawn from wire rods, falling under chapter 72 of the First Schedule to the Central Excise Tariff Act, 1958, the CENVAT Credit taken or utilized, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product, shall not be required to be reversed.

[Notification No.28/2010-C.E.(N.T.), Dated 1-9-2010]

Outdoor Catering Service provided by NGO is not taxable

The Central Government vide Notification No. 47/2010-ST, Dated 03/09/2010 exempted the taxable service of outdoor catering, if the same is provided by a Non

Government Organization registered under any Central Act or State Act, under the Centrally assisted Mid-Day Meal Scheme, from the whole of service tax.

[NOTIFICATION NO. 47/2010-ST, Dated 03/09/2010]

Powers for the purposes of adjudging a penalty under Chapter V of Finance Act, 1994

Vide Notification No. 48/2010-ST, Dated: 08/09/2010 the existing Notification No. 30/2005-ST has been amended and Superintendent of Central Excise has also been given powers for the purpose of adjudging a penalty under Chapter V of the Finance Act, 1994 for the amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A Not exceeding Rs. one lakh(excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)

[Notification No. 48/2010-ST, Dated: 08/09/2010]

COMPANYLAWUPDATES

➤ Latest Notification/ News

RENEWAL OF CERTIFIED FILING CENTRES (CFC)

The Ministry revived the Scheme of Certified Filing Centers (CFCs) and renewed the same for a further period of three years from July 01, 2010. The registration process for the renewed Scheme started from 1st July 2010 and was kept open for 2 months. The two months registration period is ending on 31st August 2010.

Requests have been received from various quarters seeking extension of the registration process for a further period. The Ministry has considered requests and has decided to extend the registration process for a further period of 3 months from September 1, 2010.

SEBI UPDATES AND MISCELLANEOUS LAW UPDATES

➤ Latest Notification/ News

Trading Rules and shareholding in dematerialized mode

1. The securities of all companies shall be traded in the normal segment of the exchange if and only if, the company has achieved at least 50% of non-promoters holding in dematerialized form by October 31st 2010.
2. In all cases, wherein based on the latest available quarterly shareholding pattern, the companies do not satisfy above criteria, the trading in such scrips shall take place in Trade for Trade segment (TFT segment) with effect from the time schedule specified above.
3. In addition to above measures, in the following cases (except for the original scrips, on which derivatives products are available or included in indices on which derivatives products are available) the trading shall take place in TFT segment for first 10 trading days with applicable price band while keeping the price band open on the first day of trading.
 - Merger, demerger, amalgamation, capital reduction/consolidation, scheme of arrangement, in terms of the Companies Act and/or as sanctioned by the Courts, in cases of rehabilitation packages approved by the Board of Industrial and Financial Reconstruction under Sick Industrial Companies Act and in cases of Corporate Debt Restructuring (CDR) packages by the CDR Cell of the RBI.
 - Securities that are being admitted to trading from another exchange by way of direct listing/MOU/securities admitted for trading under permitted category, Where suspension of trading is being revoked after more than one year.
4. Further in all cases, the exchanges shall ensure that before starting trading in scrips, the companies have complied with the disclosure requirements and the same is publicly disseminated on the website of exchanges to enable investors to take informed decision.

[Source: SEBI circular no. SEBI/Cir/ISD/ 1 /2010, September 2, 2010]

Nomenclature of 'Secretarial Audit' under SEBI Circular changed to 'Reconciliation of Share Capital Audit'

SEBI, vide its circular CIR/MRD/DP/30/2010 dated September 06, 2010, has

modified the terminology 'Secretarial Audit' as mentioned in its circular dated December 31, 2002 to 'Reconciliation of Share Capital Audit'.

[Source: SEBI Circular CIR/MRD/DP/30/2010, September 06, 2010]

Compliance with circular dated April 15, 2010.

Please refer to the circular dated April 15, 2010 wherein SEBI had mandated all registered FIIs to provide the requisite declarations and the undertakings about their structures to SEBI by September 30, 2010.

It was also communicated to FIIs through their custodians that those entities that do not file the requisite information by the stipulated date shall not be able to take fresh positions in the cash as well as the derivatives market w.e.f. October 01, 2010. From this date, non compliant entities could either, retain their current positions or sell off/ unwind.

Accordingly, w.e.f. October 01, 2010 the FIIs and sub-accounts that have not complied with the above mentioned requirements will not be permitted to take fresh positions in cash and derivatives markets while they can retain their current positions or sell off/ unwind.

SEBI shall place the list of the non compliant entities on the SEBI website – under tab- *Statistics- Foreign Institutional Investors- List of non compliant entities.*

[Source: SEBI Circular no. CIR/MD/FII/12/2010, September 29, 2010]

Arbitration Mechanism in Stock Exchanges- Amendment in Arbitration fee- Para 7

SEBI has decided to replace Para 7 of the SEBI Circular Ref. No. CIR/MRD/DSA/24/2010 dated August 11, 2010 by the following:-

“7. Arbitration Fees

7.1 Each of the parties to arbitration (other than a client with a claim / counter claim upto Rs. 10 lakh and filing the arbitration reference for the same within six months) shall deposit an amount, as may be prescribed by the stock exchange, at the time of making arbitration reference. The deposits (exclusive of statutory dues - stamp duty, service tax, etc.) shall not exceed the amount as indicated under:

Amount of Claim / Counter Claim, whichever is higher(Rs.)	If claim is filed within six months	If claim is filed after six months
≤ 10,00,000	1.3% subject to a minimum of Rs.10,000	3.9% subject to a minimum of Rs.30,000
≤ 10,00,000 > 10,00,000 - ≤25,00,000	Rs. 13,000 plus 0.3% amount above Rs. 10lakh	Rs. 39,000 plus 0.9% amount above Rs. 10lakh
> 25,00,000	Rs. 17,500 plus 0.2 % amount above Rs. 25 lakh subject to maximum of Rs. 30,000	Rs. 52,500 plus 0.6 % amount above Rs. 25 lakh subject to maximum of Rs. 90,000

7.2 A client, who has a claim / counter claim upto Rs. 10 lakh and files arbitration reference for the same within six months, shall be exempt from the deposit.

7.3 In all cases, on issue of the arbitral award the stock exchange shall refund the deposit to the party in whose favour the award has been passed. In cases where claim was filed within six months period, the full deposit made

by the party against whom the award has been passed, shall be appropriated towards arbitration fees. In cases where claim was filed after six months, one-third of the deposit collected from the party against whom the award has been passed, shall be appropriated towards arbitration fees and balance two-third amount shall be credited to the Investor Protection Fund of the respective stock exchange.

7.4 A party filing an appeal before the appellate panel [as mentioned under item 6 above] shall pay a fee not exceeding Rs. 30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal.”

[Source: SEBI circular no. CIR/MRD/DSA/29/2010, August 31, 2010]

Portfolio Managers - Regulation of Fees and Charges

Fees and Charges

a) Profit sharing / performance related fees are usually charged by portfolio managers upon exceeding a hurdle rate or benchmark as specified in the agreement. However there is no uniformity in practice on how the profit / performance of the portfolio computed. It is advised that, henceforth, profit /performance shall be computed on the basis of high water mark principle over the life of the investment, for charging of performance / profit sharing fee.

High Water Mark Principle: High Water Mark shall be the highest value that the portfolio/account has reached. Value of the portfolio for computation of high watermark shall be taken to be the value on the date when performance fees are charged. For the purpose of charging performance fee, the frequency shall not be less than quarterly. The portfolio manager shall charge performance based fee only on increase in portfolio value in

excess of the previously achieved high water mark.

Illustration: Consider that frequency of charging of performance fees is annual. A client's initial contribution is Rs.10,00,000, which then rises to Rs.12,00,000 in its first year; a performance fee/ profit sharing would be payable on the Rs.2,00,000 return. In the next year the portfolio value drops to Rs.11,00,000 hence no performance fee would be payable. If in the third year the Portfolio rises to Rs.13,00,000, a performance fee/profit sharing would be payable only on the Rs1,00,000 profit which is portfolio value in excess of the previously achieved high water mark of Rs.12,00,000, rather than on the full return during that year from Rs.11,00,000 to Rs.13,00,000.

b) All fees and charges shall be levied on the actual amount of clients' assets under management.

c) High Water Mark shall be applicable for discretionary and non-discretionary services and not for advisory services.

d) In case of interim contributions/ withdrawals by

clients, performance fees may be charged after appropriately adjusting the high water mark on proportionate basis.

Maximum Liability

e) Regulation 14(1)(b)(xiii) of the SEBI (Portfolio Managers) Regulations, 1993 provides that the agreement between the portfolio manager and the client shall, inter alia, contain, in case of a discretionary portfolio manager, a condition that the liability of a client shall not exceed his investment with the portfolio manager.

f) Portfolio managers shall strictly comply with the aforesaid Regulation.

Disclosure of fees and charges

g) To ensure transparency and adequate disclosure regarding fees and charges, client agreement shall contain a separate Annexure which shall list all fees and charges payable to the portfolio manager. The Annexure shall contain details of levy of all applicable charges on a sample portfolio of Rs.10 lacs over a period of one year. The fees and charges shall be shown for 3 scenarios viz.

when the portfolio value increases by 20%, decreases by 20% or remains unchanged. An illustration of the same is enclosed as Annexure-1.

h) All text and figures in the Annexure on fees and charges shall be at least in size 11 font.

i) All existing clients may be sent a letter as an addendum to the agreement about the applicability of the new high-water mark principle and the resultant new fees/charge structure. This annexure has to be signed by the client and sent back to the portfolio manager.

j) New clients shall be required to separately sign the annexure on fees and charges and add in their own handwriting that they have understood the fees/ charge structure.

Disputes

k) Regulation 14(1) read with clause 18 of Schedule IV of the SEBI (Portfolio Managers) Regulations, 1993 provides for settlement of grievances/disputes and provision for arbitration in the portfolio manager – client agreement.

l) In case of any dispute regarding fees and charges, the same shall be referred to arbitration for settlement as per the terms of the agreement, under the Arbitration and Conciliation Act, 1996.

These measures shall be applicable for all fresh client agreements with effect from November 1, 2010. For existing clients, the revised terms shall be implemented by January 1, 2011.

[Source: SEBI Circular no. Cir./IMD/DF/13/2010, October 5, 2010]

Review of Securities Lending and Borrowing (SLB) Framework

In partial modification to SEBI circular MRD/DoP/SE/Cir-31/ 2008 dated October 31, 2008, para 2 (a) shall read as under –

(a) Dividend: The dividend amount would be worked out and recovered from the borrower on the book closure/ record date and passed on to the lender.

The other provisions, as specified in SEBI circular no.

MRD/DoP/SE/Dep/Cir-14/2007 dated December 20, 2007 on “Short selling and securities lending and borrowing”, SEBI circular no. MRD/DoP/SE/Cir- 31/2008 dated October 31, 2008 on “Review of Securities Lending and Borrowing (SLB) Framework” and SEBI circular no SEBI/MRD/DoP/SE/Dep/Cir-01/2010 dated January 06, 2010 on “Review of Securities Lending and Borrowing (SLB) Framework” shall continue to be applicable.

[Source: SEBI circular no. CIR/MRD/DP/ 33 /2010 October 07, 2010]

Draft Listing Agreement for Securitized Debt Instruments

Highlights of the Draft Listing Agreement for Securitized Debt Instruments are as follows:

- Dissemination of performance related information by the companies on a monthly basis.

- If the number of loans under an asset class is less than 20 then disclosure of loan level details is proposed to be mandatory.
- If the number of loans exceeds 20 per asset class, quartile analysis of the performance of loans is proposed.
- The dissemination format includes pool level, asset-level and tranche level information so as to enable investors to assess the performance of underlying pools.
- The Listing Agreement places the burden of disclosures on the Special Purpose Distinct Entity (SPDE) which is the issuer of securitized debt.
- To facilitate flow of information, the draft requires the SPDE to enter into back to back

arrangements with the originator, servicer and the trustee.

Monthly reporting by Portfolio Managers

The format for the monthly report on portfolio management activity has been revised as per enclosed Annexure. All portfolio managers are advised to upload the report in the revised format on SEBI Portal by the 5th of the following month with effect from the report for the month of October 2010 onwards.

[Source: SEBI circular no. Cir. /IMD/DF/14/2010, October 08, 2010]

Filing Offer Documents under SEBI (Issue of Capital and Disclosure Requirements)

Regulations, 2009

In partial modification to circularNo.

SEBI/CFD/ICDRR/2/2009/29/09 dated September, 2009 of the above referred circular, it has been decided that with immediate effect draft offer documents in respect of issues of size upto 100 crore shall be filed with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company falls. Merchant Bankers are accordingly advised to file five copies of the draft offer documents /offer documents with the concerned office of the Board, based on the estimated issue size as indicated below:-

S. No.	Region in which Registered office of the issuer falls	Jurisdictions covered in this region	Name and address of the office of the Board where draft offer document / offer document is required to be filed
Estimated issue size of upto 100 crore			
1.	Northern Region	Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Uttar Pradesh, Chandigarh, Delhi, Uttarakhand	SEBI Northern Regional Office, 5 th Floor, Bank of Baroda Building, 16 Sansad Marg, New Delhi – 110 001
2.	Eastern Region	Assam, Bihar, Manipur, Meghalaya, Nagaland, Orissa, West Bengal, Tripura, Arunachal Pradesh, Mizoram, Jharkhand	SEBI Eastern Regional Office, 3rd Floor, L & T Chambers, 16 Camac Street, Kolkata – 700 017
3.	Southern Region	Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Puducherry	SEBI Southern Regional Office, D'Monte Building, 3rd Floor, No. 32, D'Monte Colony, TTK Road, Alwarpet, Chennai – 600 018
4.	Western Region	Gujarat, Rajasthan, Maharashtra, Madhya Pradesh, Dadra and Nagar Haveli, Goa, Daman, Diu, Chhattisgarh	SEBI Head Office, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051
Estimated issue size greater			

than 100 crore			
5.	All regions	All jurisdictions	SEBI Bhavan, Plot No. C4-A, “G” Block, BandraKurla Complex, Bandra (East), Mumbai – 400051

[Source: SEBI Circular No. CIR/CFD/DIL/9/2010, 13th October, 2010]

Clarification on Trading Rules and shareholding in dematerialized mode

This is further to SEBI circular SEBI/Cir/ISD/1 /2010 dated September 02, 2010 regarding Trading Rules and shareholding in dematerialized mode.

It is clarified that while computing the requirement of minimum 50% shareholding of non promoters in demat form in a company, the government holding in non promoter category may be excluded.

The Stock Exchanges are advised to:

- put in place the adequate systems and issue the necessary guidelines for

implementing the above decision.

- make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately.
- bring the provisions of this circular to the notice of the member brokers of the Exchange and also to disseminate the same on the website.
- communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Report.

[Source: SEBI Circular No. SEBI/Cir/ISD/2/2010, 26th October, 2010]

European Style Stock Options

This is in continuation of SEBI Circular No. SMDRP/DC/CIR-7/01 dated June 20, 2001, regarding exercise style of stock option contracts.

In consultation with Stock Exchanges, it has been decided to provide flexibility to Stock Exchanges to offer either European style or American style stock options.

After opting for a particular style of exercise, a Stock Exchange shall offer option contracts of the same style on all eligible stocks.

All other contract specifications, including risk management framework applicable for American style stock options, shall apply to European style stock options. Any modification shall require prior approval of SEBI.

The Stock Exchanges interested to introduce European style stock options are advised to:

- put in place proper systems and procedures for smooth introduction of European style stock options,
- make necessary amendments to the relevant bye-laws, rules and regulations for introduction of European style stock options,
- notify all categories of market participants, including general public, and also to disseminate the same on their websites, at

least one month in advance of implementing the switchover in the exercise style.

After opting for a particular style of exercise, a Stock Exchange may change to another style of exercise only after seeking prior approval of SEBI.

[Source: SEBI Circular No. CIR/DNPD/6/2010, 27th October, 2010]

Risk Management And Insurance- An Analysis

Human resources and business are susceptible to many risk exposures, which may affect the life and continuity of business. An organization has to analyze the risks, which it is exposed to, and then aim at controlling or minimizing/avoiding the risks. The risks which cannot be minimized or controlled have to be transferred to a third party by means of Insurance, or the organization may prefer to retain the risk, if it believes that it has sufficient funds in the business to finance the risk.

Risk Management is defined as the systematic way of ensuring protection of business resources and income against losses so that the aim, goals and vision of the company can be reached.

Thus, Risk Management creates stability and contributes to growth and assures profitability of the Organization. Risk, being a burning topic of discussion across industries and economies, is attracting a lot

of interest in methods of risk management and we have hereunder analysed the same.

Purpose Of Risk Management

Risk Management aims to provide an incident free and accident free environment to achieve the objectives of an organization.

Risk Management aims to help the owners to have control on loss incidents and to reduce the extent of losses by proper

study of the exposures and actions to be taken to control the same. For this purpose it is necessary to understand the loss producing events, the nature of losses/ extent of losses to come up with the loss control measures.

Risk Analysis

Risk analysis needs to be done by a person who is conversant in the identification and measurement.

The severity of risk depends on two factors –extent and frequency. The frequency is to be analyzed based on analysis of data, using statistical methods. The extent of loss can be analyzed using several methods as enumerated below:

Methods Of Risk Analysis

HAZOP STUDY- The operability of on organization after suffering from a hazard.

EVENT ANALYSIS- Investigate the cause of a risk and the resultant effect.

THREAT ANALYSIS- Analysis of threats that an organization is exposed to.

INPUT- OUTPUT ANALYSIS-To trace the flow of goods and services in order

to identify the contribution of parts of organization to the total earnings and to analyze the exposures, in the process.

FAULT TREE ANALYSIS- The relationship between different types of failures is examined, here a tree is constructed by asking what must occur before a loss producing event happens.

Risk Avoidance

This is also known as risk elimination, here we identify the risk and if possible avoid the risk by eliminating the source.

Risk Minimization-Risk Control

If risk cannot be eliminated then it is necessary to minimize the extent of loss/damage/liability by employing loss control measures.

Risk control is an intermediate point between risk assessment and risk retention. Risk control efforts are prompted by the awareness of the organization and its recognition of the risk exposures.

These are techniques, tools, strategies and processes that seek to avoid, prevent, reduce

or otherwise control the frequency & magnitude of loss & other undesirable effects. Risk control also refers to the methods that seek to improve understanding or awareness of its activities affecting exposure to risk.

Risk Retention

To keep the costs under control, after analyzing the risks the Management, may decide to retain some of such losses to its account. Once a decision is taken, then necessary provision needs to be made to avoid such a loss, if happens, eating into the operating budget. Special contingency funds are required to be created for the purpose.

Retention is a passive or unplanned act when the risk manager is not aware of the existence of neither the risk nor its effect and no decision to handle the risk is taken, the operation of such risk will be a surprise for the Organization.

The decision to minimize the risk exposure will call for deployment of funds which may divert the capital available from operating budget. The decision depends on the ability of the

organization- its risk appetite and financial strength.

Despite risk analysis this may happen when the risk manager has known the existence of the risk but wrongly taken into account its magnitude.

So, whether the decision to retain risk is rational or irrational will depend on how the decision was taken.

Corporate Risk Manager

The Corporate risk manager is essentially the coordinator. He has to analyze the various activities and find out the risks involved and analyze which are to be controlled, avoided and which are to be insured.

Once the plans are finalized and adopted by the Management, the Insurance

dept ensures that the insurance policies are obtained and maintained during the annual period. Periodical reviews need to be done to ensure that the risks are analyzed and necessary modifications are done to suit the organization's policies.

Contributions Of Risk Management To The Business

- Achievement of objectives/ goals
- Reduced anxiety due to losses are of reasonable magnitude and does not cause serious loss situations

- Goodwill is maintained by meeting the obligations
- The business is able to survive competition
- Successful and continued operations
- Resultant growth and sustained earnings
- Better care for employees and society at large
- Reduction of expenses
- Better relationships between customers, suppliers, employees

FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS

➤ Latest Notification/ News

Consolidated FDI Policy

The Circular 1 of 2010 was issued by Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Govt. Of India, on 31st March 2010 that consolidated into one document all the prior policies/regulations on FDI which are contained in FEMA, 1999, RBI Regulations under FEMA, 1999 and Press Notes/Press Releases/Clarifications issued by DIPP and reflected the policy framework on Foreign Direct Investment.

DIPP issued Circular 2 of 2010 on September 3, 2010 effective from October 1, 2010 that consolidates, subsumes and supersedes all Press Notes/Press

Releases/Clarifications/Circulars issued by DIPP, which were in force as on September 30th, 2010, and reflects the FDI Policy as on October 1st, 2010.

Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to October 1, 2010 shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

[Source: D/o IPP F. No. 5(14)/2010-FC, 30.09.2010]

FII Investment Limit in Government Securities and Corporate Bonds Increased by US \$ 5 Billion

The Government has increased the current limit of Foreign Institutional Investors (FII) investment in Government Securities by US \$ 5 billion raising the cap to US \$ 10 billion and the incremental limit of US \$ 5 billion be invested in securities with residual maturity of over five years. The current limit of FII investment in corporate bonds has also been increased by US \$ 5 billion raising the cap to US \$ 20 billion and the incremental limit of US \$ 5 billion be invested in corporate bonds with residual maturity of over five years issued by companies in infrastructure sector.

[Source: PIB, DSM/BY/S Release ID: 65937]

CORPORATE FINANCE

➤ Latest News

PRIVATE EQUITY

Samara Capital Puts Rs 150Cr In Thriveni Earthmovers

Thriveni Earthmovers Private Limited (TEMPL), one of the leading providers of mining services in India, primarily in the iron ore segment, has raised Rs 150 crore from Samara Capital, a Mumbai-based sector-agnostic mid-market PE fund.

Edelweiss Capital acted as an advisor to the transaction. Of late, Samara seemed to have skewed its focus towards oil mining & related services. In 2008, it invested \$19 million in Global Coal & Mining Pvt. Ltd – a coal & consumable fuels company.

[Source: The Economic times Oct. 01, 2010]

Netmagic Solutions Raises Rs 70Cr From

Nokia Growth Partners, Cisco

Netmagic Solutions, a managed IT hosting services provider, has raised Rs 70 crore (\$15.7 million) in a round led by Nokia Growth Partners and Cisco Systems. Existing investors Fidelity International and Nexus Venture Partners also participated in the round. The funding will enable Netmagic Solutions to increase its datacenter footprint in Tier - I cities across India.

Netmagic's Tier III+ datacenters are located in Mumbai, Bangalore, and Chennai and it also has a virtual data center in the United States.

[Source: The Economic Times Oct.05, 2010]

Zephyr Peacock Invests \$10M In IT Services Firm Trimax

The Rs 350-crore Trimax raised its first round from Banyan Tree Growth Capital Fund last year. Zephyr Peacock India Fund has invested \$10 million

in Mumbai-based IT solutions provider Trimax IT Infrastructure and Services. Trimax offers services in systems integration, data centre services, and IT infrastructure management. [Source: Business Standard Oct. 06, 2010]

Matrix Partners Puts Rs 25Cr More In Muthoot Finance In Pre-IPO Deal

Matrix Partners India has put in an additional Rs 25 crore in Kerala-based NBFC Muthoot Finance Limited after co-investing Rs 78.5 crore each with Baring Private Equity Partners India in July this year. This was part of yet another round of pre-IPO transactions where Muthoot also raised Rs 30 crore from UK's Wellcome Trust besides a separate deal where promoters of the company have agreed to sell another chunk of shares representing around 1% of pre-issue capital for Rs 55 crore to Wellcome Trust.

[Source: The Mint Oct.7, 2010]

Sequoia Capital Invests Rs 70Cr In Biopharma Firm Celon

Sequoia, which has already invested in GVK Biosciences and Sai Advantium, continues to bet on lifescience space. Sequoia Capital India has invested Rs 70 crore (\$16 million) in Hyderabad-based biopharmaceutical company Celon Labs, which has established brands in oncology, critical care and gynaecology segments. The funds will be used by the firm to expand its manufacturing infrastructure and strengthen its marketing activities. Sandeep Singhal, Managing Director of Sequoia Capital will join the board of Celon Labs following the transaction.

[Source: **Business Standard** Oct.07, 2010]

Matrix Partners Invests Rs 50Cr In Eyecare Chain

In line with the growing interest in the specialty healthcare space, Matrix Partners India has invested Rs 50 crore in New Delhi -based Centre for Sight, a chain of specialty eye hospitals. Centre for Sight, started by Chairman & Medical Director Dr Mahipal S. Sachdev, a renowned ophthalmic surgeon,

will use the funds to expand to a network of over 60 eye hospitals in three years and becoming one of the largest eye hospital chains across India. It will also use the funds for acquisitions of certain private eye care hospitals in Tier II and Tier III cities. The chain is currently operating at 10 locations across North India with five more hospitals being opened by year end.

With this investment, Avnish Bajaj, Managing Partner, Matrix India, will join the board of Centre for Sight.

[Source: **Business Line** Oct. 19, 2010]

Electronica Machine Tools Raises Rs 25Cr From IFCI Venture Capital

Pune based Electronica Machine Tools Ltd has raised Rs 25 crore in funding from IFCI Venture Capital's India Automotive Components Manufacturers Private Equity Fund. The funding would be used to open international offices and for working capital requirements, among others.

Electronica Machine Tools, which was established in 1973, was the first Indian manufacturer of electric discharge machine (EDM) with three manufacturing locations in Pune, and with in-house R&D centre and a specialised

technology centre at Switzerland. The company has revenues of around Rs 70 crore. The funding would be used to open international offices, working capital requirements, among others.

[Source: **The Economic Times** Oct.22, 2010]

Red Fort Capital Invests Rs 120Cr In Parsvnath Office Project

Delhi-based realty firm Parsvnath Developers Ltd (PDL) is selling a 24.5% stake for Rs 120 crore in its upcoming office complex project in the city centre to Red Fort Capital. The PE firm is taking the stake in 'Red Fort Parsvnath Towers', a state of the art office complex coming up in New Delhi's Connaught Place.

Parsvnath has already executed a concession agreement with Delhi Metro Rail Corporation (DMRC) to deliver the project on built, operate and transfer (BOT) basis for Rs 99.5 crore. This concession has been assigned to Farhat Developers Pvt Ltd where Red Fort is picking up the stake. Larsen & Toubro (L&T) is likely to construct the project on a turnkey basis and has already been given a letter of intent. [Source: **Business Standard**, Oct. 26, 2010]

Tata Capital PE Invests Rs 70Cr In Cebbco

Tata Capital, the financial services arm of the Tata conglomerate, has invested Rs 70 crore from its growth capital fund in the recently listed Commercial Engineers & Body Builders Co Ltd (Cebbco). Tata Capital Growth Fund I picked up a 14% through secondary transactions before the IPO this year. The sellers included PE firm New York Life Investment Management India Fund (FVCI) II (NYLIM II) and the promoters of the firm. This stake would have got diluted after the issue. Akhil Awasthi, managing partner of Tata Capital's growth fund, has joined Cebbco board as a nominee director. Tata Capital is currently raising a \$500 million growth capital fund of which 25% has already been raised from domestic investors. Tata Capital has tied up with Japan's Mizuho Securities to raise the rest. [Source: The Economic Times Nov.1, 2010]

VENTURE CAPITAL

Helion Invests In Series-B Round Of Mast Kalandar

Against the backdrop of a successfully concluded IPO of JP Morgan-backed Jubilant Foodworks, venture capital investors continue to place bets on the QSR (Quick Service Restaurant) space. Mast Kalandar, a home grown Indian QSR, has secured series B investment from Helion Venture Partners, Series A backer Footprint Ventures and Salarpuria Group, an angel investor into the company. This is the second investment of Helion Ventures in the QSR space. In 2009, the VC firm invested \$1.9 million into Brand Calculus Franchising India Pvt Ltd. The company will utilize the monies to expand to a 100-store chain by 2012.

[Source: The Mint Oct. 06, 2010]

Jasper Infotech Sets Up \$2M Fund To Invest In Marketing Firms

New Delhi-based Jasper Infotech Pvt. Ltd., a multi-channel direct marketing platforms company, is setting aside a \$2-million corpus to

invest in innovative companies in the marketing services and platforms space in India. Christened 'Jasper Marketing Innovation Fund', the fund would look at investments and acquisitions typically in the range of \$50k-250k. Jasper Infotech runs SnapDeal.com, one of the largest players in the group buying space. The firm is backed by venture capital fund IndoUS Venture Partners. [Source: Business Standard Oct.11, 2010]

LiveMedia Buys Stake In Tag Media

Delhi based LiveMedia, an out-of-home TV company, has bought a controlling stake in Tag Media, an in-store television network, sources close to the development told VCCircle. The website of Tag Media lists Rajan Mehta, Founder of LiveMedia and former VP of Nortel Networks in India, as one of its Directors. Both LiveMedia and Tag Media are funded companies. In 2007, Live Media raised an undisclosed sum from Draper Fisher Jurvetson and Bay Partners while Tag raised money from Intel Capital the same year. [Source: The Mint Oct.26, 2010]

OnMobile Sells Part Stake In VerSe Innovation

Matrix Partners. OnMobile incubated the company in 2007, with a total investment of Rs 5.5 crore for 51% stake.

[Source: The Economic Times Oct 27, 2010]

OnMobile Global, India's largest value-added service (VAS) company has sold 8% of its 35% stake in VerSe Innovation for about Rs 10 crore (around \$1.8 million), reports Medianama,

quoting ArvindRao, CEO, OnMobile. VerSe Innovation, a mobile classifieds service firm, last year raised Rs 20 crore from

INVESTMENT BANKING

Zicom Forays into Telecom Tower Security Biz

Security solutions firm Zicom Electronic Security Systems Ltd, that sold its institutional and government projects business to French firm Schneider Electric, is venturing into managed security services to telecom operators/telecom infrastructure

providers for their Base Tower Stations (BTS) and other assets by forming a subsidiary. In the first year, it is targeting 20,000 BTS out of around 3 lakh BTS installed in the country at present. The project will incur investment of around Rs 150 crore. Part of the cash generated from the Schneider deal will be deployed for this venture, said ManoharBidaye, chairman of Zicom Electronic Security Systems Ltd.

[Source: The Economic Times Oct. 01, 2010]

HEAD OFFICE:

Mr. U.N. Marwah, Managing
Partner
4/80, Janpath
New Delhi-1100 01
(India)
Tel: +91-11-43192000
Fax: +91-11-43192021
E-mail: rnm@rnm.in

BRANCH OFFICE:

Mr. Rathna Kumar
813 Oxford Towers,
139 Airport Road,
Bangalore-560 008
E-mail: bangalore@rnm.in

AFFILIATE OFFICES:

Mumbai

Mr. Harshal Aggarwal
204, Mhatre Pen Building,
Senapati Bapat Marg, Dadar
(W),
Mumbai-400 028
Tel. +91 22 24314881, +91
22 24314882
Fax. +91 22 24363312
E-mail: harshal@rnm.in

Pune

Mr. Nitin Khangaonkar
9 'B' & 'C' Wing,
Supriya Gardens, Aundh,
Pune- 411 007
Tel: +91 98230 81701
E-Mail: nitin@rnm.in

Chennai

Mr. Ashok Deora
SF 6, Golden Enclave,
184 Poonamallee High Road,
Chennai- 600 010
Tel: + 91 44 4217 8153, + 91
44 2641 5805
Fax : + 91 44 2641 5805
E-mail: ashok@rnm.in

Mauritius

Mr. Kamal Hawabhay,
365 Royal Road Rose Hill,
Mauritius
Tel : + 230 4542110
Fax : + 230 4549671
E-mail: kamal@rnm.in

Hong Kong

Mr. Raymond Choi
3705 Bank of America Tower
12 Harcourt Road
Central
Hong Kong
Tel: +852 2115 9878
Fax: +852 2115 9818
E-mail: raymond@rnm.in

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