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U.N. Marwah

Dear Readers,

It is my pleasure to inform you that Mr. Raghu Marwah, Partner was invited to speak at the National Seminar on the “Changing Paradigm in Finance” at the Bharatiya Vidya Bhavan’s Usha and Lakshmi Mittal Institute of Management (BULMIM) held on December 4, 2010 which was very well received by the audience, faculty and Director.

In a major judgement the Mumbai Tribunal has held that a resident of UAE would be eligible to the benefit under the DTAA between India and UAE and would not be liable to tax in India, even if under the UAE laws no tax is payable.

The recent amendment in the TDS provisions whereby the deductor is now liable to furnish quarterly TDS Certificates to the deductee’s is worth highlighting to our Readers since it would go a long way in identifying errors in TDS on an ongoing basis rather than at the end of the year.

The FAQ issued by the RBI under which it has been clarified that setting up a Company overseas by making remittance under the Liberalised Remittance Scheme of \$200,000 will have far reaching impact. Prior to the issuance of the FAQ, investments were being made overseas under the Scheme through holding company structures, which now would need to be re-considered.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

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DIRECT TAX

Charitable Purpose

Section

2(15),10(22),(23C)(vi),11

Section 10(23C) benefit cannot be denied merely because there are profits. Further, in computing the profits capital expenditure has to be deducted.

[Source: **Pinegrove International Charitable Trust V. UOI (P&H) [2010] 327 ITR 73 (P&H)**]

International Taxation

US Co. has PE in India thru its WOS

[Section 9(1)(i)]

Assessee a US company, providing IT enabled services to its clients by assigning or sub contracting execution of the contracts to its wholly owned Indian subsidiary EFI and supplying the relevant software and data base to the latter, free of charge, has business connection in India within the meaning of section 9(1)(i) as well as a PE in the form of EFI as per Art. 5 of the Indo-US DTAA, profits attributable to the PE are to be worked out by applying the proportion of Indian assets, including EFI's assets,

to the aggregate of global profits and reducing resultant figure by the assessed profits of EFI.

[Source: **EFunds Corporation vs. Asst. DIT (2010) 45 DTR 345 (Delhi)(Trib.)**]

Foreign income-taxes not eligible for deduction u/s 37(1)

Assessee earned profits on export of software which was eligible for deduction u/s 80HHE. Assessee paid foreign income-taxes of Rs. 60 crores on the said profits in respect of which the assessee claimed tax credit u/s 90 & 91. Assessee also claimed that it was eligible for a deduction u/s 37(1) in respect of the said foreign income-taxes. While the AO allowed tax credit, he denied deduction u/s 37(1) on the ground that the said payment of foreign taxes was an "application of income" and that it was hit by s. 40(a)(ii). ITAT upheld the view of AO. Despite bar in DTAA, credit for State taxes to be given u/s 91 in addition to Federal taxes.[Source:**DCIT vs. Tata Sons (ITAT Mumbai) ITA No: 4776/Mum/04**]

Though foreign artistes are chargeable to tax in India, their agents are not in the absence of a PE

The assessee, an event organizer, entered into an agreement with "Colin Davie Artiste Services", a UK company, under which the latter agreed to procure renowned foreign entertainers like "Diana King" & "Shaggy" for performances in India. The assessee agreed to pay a fee to the entertainers as well to Colin Davie and to reimburse expenses incurred. In respect of the fees paid to the entertainers, the assessee accepted that the same was chargeable to tax in India under Article 18 of the India-UK DTAA and deducted tax at source u/s 195. However, in respect of the fees paid to Colin Davie and amounts paid towards reimbursement of expenses, the assessee argued that the same were not liable to tax in India. The AO took the view that as the payment to Colin Davie was high, *it was actually meant for payment to the entertainers*. He also held that *the nature of services agreed to be rendered by Colin Davie*

were such that it could not be performed without having a presence in India. ITAT upheld the view of assessee.

[Source: ADIT vs. Wizcraft International Entertainment (ITAT Mumbai) I.T.A.No. 3208/Mum/2003]

Section 9(1)(vii),80-O

Assessee receiving remuneration for rendering technical service by deputing personnel – agreement for providing technical service approved by CBDT/commissioner.

[source: Voltas International Ltd. v. Asst. CIT (Mumbai) [2010] 5 ITR (Trib) 255 (Mumbai)]

UAE Tax resident would not be liable to tax in India under DTAA

Hindustan Petroleum Corporation Ltd. entered into an aviation services agreement with Caltex Al Khaliij LLC, a company incorporated in UAE. Caltex did not pay any tax in UAE. Mumbai ITAT held that, if the right to tax UAE residents in specified circumstances vested only with the UAE

under the tax treaty, that right, whether exercised or not, remained the exclusive right of the UAE. There was no precedent that the UAE would have to actually exercise that right before India would grant the benefits of the tax treaty. Application of tax treaty could not be denied solely on the ground that Caltex did not pay any tax in the UAE. Judicial forums had to interpret the provisions of a tax treaty as they existed even if they resulted in double non-taxation.

[Source: Hindustan Petroleum Corporation Ltd. V ACIT - Mumbai Trib]

Deductions & Exemptions

Disallowance of expense incurred to earn exempt income- date of applicability Section 10(33), 14A, Rule 8D

Whether disallowance of expenses incurred to earn an exempt income under section 14A, in effect from April

2007, could be applied to assessee for assessment year 2006-07 without an established nexus between exempt income and expenses. Held, no. Section 14A(2) & 14A(3) inserted w.e.f. 1.4.2007 is applicable from Assessment Year 2007-08 & not applicable for Assessment Year 2006-07.

[Source: Minda Investments Ltd. V. DCIT (Delhi ITAT) (I.T.A. No. 4046/Del/2009)]

Priority of Deductions

Section 80-IA(9)

The AO held that the deduction allowed u/s 80-IA had to be reduced from the profits for computing deduction u/s 80HHC.

[Source: Great Eastern Exports vs. CIT (Delhi High Court) ITA 267 OF 2008]

Freight Subsidy whether profit from undertaking

[Section 80-IA]

Industrial undertaking-special deduction under section 80-IA-condition precedent-profit must be “derived” from industrial undertaking. Freight subsidy received from government-not derived from industrial undertaking-not entitled to be taken into account for computing

special deduction under section 80-IA.

[Source: CIT V. Kiran Enterprises [2010] 327 ITR 520 (HP)]

House Property

House Property Vs Business Income

[Section 24,28]

Rental income assessed in earlier years as income from house property-now income could not be assessed as business income without any reason.

[Source: CIT v. Haryana Tourism Corporation Limited (P&H)[2010]327 ITR 26 (P & H)]

Profits & Gain from Business & Profession

Depreciation - Unabsorbed Depreciation - Carry Forward and Set off

[Section 32(2)]

The unabsorbed depreciation brought forward as on April 1, 1997 could be set off against the taxable business

profit or income under any other head for the Asst. Year 1997-98 and even subsequent years. Short term capital gains for the Asst. Year 1999-2000 can be set off against unabsorbed

depreciation brought forward as on April 1, 1997.

[Source: CIT vs. Rpi Signalling Systems Ltd. (2010) 328 ITR 283 (Mad.)]

Depreciation on Brand Name under Scheme of Arrangement

[Section 32(1)(ii)]

Where assessee company received brand name under a scheme of arrangement under section 391 to 394 of Companies Act 1956, assessee was eligible for depreciation in respect of brand name under section 32(1)(ii) of the Income Tax Act.

[Source: KEC International Ltd. vs. Addl. CIT (2010) 41 SOT 43 (Mum.)]

Renovation of leased property

[Section 32, Explan 1]

Expenditure for renovation of leased premises – not allowable.

[Source: ITO v. Pritam Juice (Mumbai)[2010] 5 (TRIB) 664 (Mumbai)]

Franchisee Incentive

[Section 37]

Amount paid to franchisees under incentive scheme communicated to them on 4.4.2001-amounts not deductible in financial year ending 31.3.2001.

[Source: Yum! Restaurants (India) P. Ltd. V. CIT (Delhi) [2010] 327 ITR 150 (Delhi)]

Capital gains

Capital Gains on Transfer of Undertaking [Section 50]

Land is not a depreciable asset. Section 50 deals only with the transfer of depreciable assets. Once land forms part of the assets of the undertaking and the transfer is of the entire undertaking as a whole, it is not possible to bifurcate the sale consideration. Sec. 50 applies when depreciable assets alone are transferred.

[Source: CIT vs. Coimbatore Lodge (2010) 328 ITR 69 (Mad.)]

Tax on gain in land acquisition- when arises [Section 45(5)]

Compulsory acquisition of land-enhanced compensation and interest received-amount

received can be taxed only after final disposal of case.
[Source: **New friends co-op. house building SY. LTD. v. CIT (P&H) [2010]327 ITR 39 (P & H)**]

Capital Gains on agricultural land [Section 54B]

Sale of agricultural land and investment in purchase of new land – registration of new land under assessee's son's name as co-owner – new land used for agricultural purpose – assessee entitled to deduction u/s 54B.
[Source: **CIT v. Gurnam Singh [2010] 327 ITR 278 (P&H)**]

Investment in Residential House [Section 54F]

Investment in residential house- sale proceeds not appropriated wholly for purchase of residential home within specified period- assessee not entitled to exemption of whole capital gain under section 54F- corresponding deduction on amount utilised in purchase of residential house allowable.
[Source: **Milan SharadRuparel v. Assistant CIT [2010] 5 ITR (TRIB) 570 (MUMBAI)**]

Undisclosed Income

Genuineness of Share Application [Section 68]

Cash Credit-substantial evidence produced by assessee to prove creditworthiness of creditor and genuineness of share application. Failure to produce creditor not material-deletion of addition -no interference.
[Source: **CIT V. Orbital Communication (P) Ltd. [2010] 327 ITR 560 (DELHI)**]

Minimum Alternate Tax

Section 115JB

Where normal tax payable would be less than ten percent of book profits – book profits deemed to be total income.
[Source: **Ajanta Pharma Ltd. v. CIT (SC) [2010] 327 ITR 305 (SC)**]

Tax Assessment, search & seizure

Addition based on Report of Valuation Officer [Section 142A]

When books of account are found to be correct and complete in all respects and no defects is pointed out therein, then addition on account of difference in cost of construction of a building

cannot be made even if a report from Dept. Valuation Officer (DVO) is obtained within the meaning of section 142A.

[Source: **Rajhans Builders vs. Dy. CIT (2010) 41 SOT 331 (Ahd.)**]

Taxability on Handing over of Possession [Section 133A]

Documents seized during survey establishing handing over of possession of flats to purchasers by assessee – profit from sale of flats handed over to purchasers to be assessed in years in which they were handed over by assessee.

[Source: **Growth Techno Projects Ltd. v. CIT (Delhi)[2010] 5 ITR (Trib) 510 (Delhi)**]

Reassessment

after Assessment u/s 143 (1)

For purpose of reopening of assessment under section 147, AO must form and record reason before issuance of notice under section 148. The reasons so recorded should be clear and unambiguous and mustnot be vague. There cannot be any reopening of assessment merely on the basis of information received without application

of mind to the information and forming opinion thereof. Reopening on mechanical basis void even where section 143(3) assessment not made.

[Source: Sarthak Securities vs. ITO (Delhi High Court) www.itatonline.org]

Income barred by limitation [Section 148, 271(1)(c)]

Assessee providing bona fide explanation in relation to seized cash as accumulated income of assessment years 1975-76 to 1982-83 and furnishing returns of income – no case of concealment of income or furnishing of inaccurate particulars – penalty cannot be imposed.

[Source: Dhanya Kumar Jain v. ITO (Indore) [2010] 5 ITR (Trib) 497 (Indore)]

Deduction of Tax at Source

Liability to withhold tax on Non Resident payments [Section 195]

Mere remittance to non-resident – duty to deduct tax at source – does not arise unless remittance contains wholly or partly taxable income.

[Source: GE India Technology Centre P. LTD. v. CIT (SC) [2010] 327 ITR 456 (SC)]

Tax Administration

Appellate Tribunal - Additional Evidence [Section 254(1)]

There is no need to make a formal application under rule 29 of the ITAT Rules for admission of the additional evidence. There is no error in the order of Accountant member admitting the additional evidence and sending it to the CIT for examination and decision.

[Source: Mascon Global Ltd. vs. ACIT (2010) 45 DTR 20 / 133 TTJ 257 (Chennai)(Trib.)(TM)]

Applicability of CBDT Circular [Section 260A]

Appeal to HC-competency of appeal-monetary limit laid down in CBDT circular-binding on revenue-tax effect less than monetary limit-appeal not maintainable.

[Source: CIT V. Abhinash Gupta [2010] 327 ITR 619 (P&H)]

Penalty

Conditional Surrender [Section 68, 271(1)(c)]

Penalty – concealment of income – cash credits – creditors identity and genuineness of transactions

not established – assessee explanation not bona fide and failure to discharge burden – conditional surrender of income after investigation by department not voluntary – department not precluded from levying penalty.

[Source: Trivium Power Engineers P. LTD. V. ITO (Delhi) [2010] 5 ITR (Trib) 347 (Delhi)]

Section 273A

Waiver of penalty and interest – conditions precedent – disclosure of income must be voluntarily – genuine financial hardship if penalty were imposed – disclosure of income after search and discovery of incriminating material – no evidence of financial hardship if penalty were imposed – rejection of application for waiver justified. [Source: Shardadevi P. Jhunjhunwala v. CIT [2010] 327 ITR 211 (Bom)]

Miscellaneous

Though assessee shown as “owner” of demat shares in depository’s books, if he shows to be mere “pledgee”, there is no “benefit” u/s 2(24)(iv)

[Source: JCIT vs. Mukesh D. Ambani (ITAT Mumbai) I.T.A.No.7604/Mum/07]

Large volume of purchase & sale of shares does not by itself mean activity is business

The assessee, a broker in the BSE, disclosed short-term capital gains and long-term capital gains on sale of shares. The AO accepted the LTCG as such though he held that the STCG was assessable as “business profits” on the ground that *the assessee was a stock broker and there was large volume and frequency (more than 300) transactions.* On appeal, the CIT (A) reversed the AO.
[Source: DCIT vs. SMK Shares & Stock Broking (ITAT Mumbai) ITA No.799/Mum./2009]

Wealth Tax

Section 2(ea)
HUF-land on which construction not permitted-not to be considered urban land-value of land not includible in net wealth.
[Source: AmritLalJindal And Sons (HUF) v. WTO [2010] 327 ITR 161 (P&H)]

➤ **Latest Notification/ News**

Incometax (6th Amendment) Rules, 2010

As per the amendments, the Rules regarding the time and mode of payment of TDS/ TCS, format of TDS/ TCS certificate and statement of TDS/TCS has been amended. Specifically Rule 30, 31, 31A and 31AA dealing with TDS have been substituted. In addition Rule 37A shall be omitted and rules 37CA and 37D dealing with TCS shall be substituted.
The most significant change brought about under the amendment is wrtthe frequency of issuance of TDS certificates. The deductor in Forms specified in column (2) of the Table below shall furnish to the employee or the payee, as the case may be, as per the periodicity specified in the corresponding entry in column (3) and by the time specified in

thecorresponding entry in column (4) of the said Table:-

Table

Sl. No.	Form No.	Periodicity	Due date
(1)	(2)	(3)	(4)
1.	16	Annual	By 31 st day of May of the financial year immediately following the financial year in which the income was paid and tax deducted
2.	16A	Quarterly	Within fifteen days from the due date for furnishing the statement of tax deducted at source under rule 31A

[Source: Notification No. 41 /2010 dated 31st May 2010 F.No. 142/27/2009SO(TPL) by CBDT]

INDIRECT TAX

➤ SERVICE TAX

Welfare Activity in Residential Colony For Employees Not Input Service

Services of repair, maintenance and Civil constructions used in the residential colony for the employees of the assessee are not input service. Rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in rule 2(l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

[Source: CCE, Nagpur Vs Manikgarh Cement, 2010-TIOL-720-HC-MUM, October 11, 2010]

Cost of food catered by a mandap keeper inclusive in value

Mandap Keeper - Cost of Food supplied cannot be deducted under Notification No. 12/2003 - Only abatement under Notification No. 1/2005 can be allowed. Levy of sales tax or VAT on the value of food catered by a mandap keeper under State legislation does not alter or affect the levy of service tax under Finance Act, 1994.

[Source: M/s Sayaji Hotel Limited Vs CCE, Indore 2010-TIOL-1357-CESTAT-DEL, September 27, 2010]

Storage as Per Government's Direction not Taxable

Storage of buffer stock of sugar as per Government's direction for which payment is received from Government - Not liable for service tax under storage and warehousing service.

[Source: CCE, LTU, Chennai Vs M/s EID Parry (India) Ltd 2010-

TIOL-1355-CESTAT-MAD, July 6, 2010]

Validity of Service Tax on financial leasing services Confirmed

Validity of Service Tax on financial leasing services, upheld - "The finance lease" and "the hire-purchase finance" thus squarely come under the expression "financial leasing services" in Section 65(12) of the Finance Act, 1994 (as amended). The impugned levy is within the legislative competence of Parliament with reference to Entry 97 of List I of Seventh Schedule of the Constitution and, thus, the same is constitutionally valid.

[Source: Association Of Leasing & Financial Service Companies Vs UoI, 2010-TIOL-87-SC-ST-LBSUPREME COURT (LARGER BENCH), October 26, 2010]

Input Service

Security service utilized in residential colony situated

outside factory premises is not an Input Service.

[Source: M/s ISMT Limited Vs CCE, Aurangabad 2010-TIOL-1393-CESTAT-MUM, August 19, 2010]

➤ CENTRAL EXCISE

Manufacture

Purification and filtration done to make product hydrochloric acid and sulphuric acid marketable in the international market-process would be covered by term “manufacture” as contemplated in Section 2(f) of Central Excise Act, 1944

[Source: Commissioner of C. Ex. & Cus., Thane-I Vs. Alok Enterprises, 2010(259)ELT 333(Bom)]

Liability of Partner of Firm

Firm acts only through its partners and import by a partnership firm is in turn only by partners-No need to issue show cause notice to every partner of the firm- But if any partner failed to avail of opportunity and if

adjudicating authority was constrained to observe that the petitioner’s firm was only seeking adjournments and not availing the opportunity, it is not a case of want of opportunity-Penalty imposed on firm and partners jointly liable to pay the penalty-But for realization of penalty the authorities can look up to any of partners, whether that partner had been personally issued with a notice or not-section 11 of Foreign Trade (Development and Regulation) Act, 1992

[Source: Varalakshmi Exports Vs Union of India, 2010 (259) ELT 344 (Kar)]

Want of Natural Justice in Adjudication

Deputy Director General of Foreign Trade heard the petitioners but impugned order passed by Joint Director General of Foreign Trade who had not heard the matter at all- Impugned order set aside and Joint Director General of Foreign Trade directed to hear the matter and pass a reasoned order.

[Source: Nageeka Exports Ltd. Vs. Zonal Director General of Foreign Trade, 2010 (259)ELT 346 (Cal.)]

Relevant Date for Export Duty

Let export order permitting loading of goods given on 28-2-2007-Vessel arrival at port on 1-3-2007-Export duty imposed on iron ore from 1-3-2007-No export duty payable on 28-2-2007 when Let export goods given-Date of determination of rate of duty and valuation of export goods to be date when clearance permitted –order permitting clearance and loading of goods for exportation made on 28-2-2007 and such date to be taken for determination of rate of duty-Date of starting of actual loading totally irrelevant-Export duty not payable on 28-2-2007-CESTAT overlooked relevant date for valuation and committed error by treating 1-3-2007 as relevant date. Section 16, 50 & 51 of Customs Act, 1962.

[Source: NarayanBandekar & Sons Pvt. Ltd. Vs Commr. Of Cus. & C. Ex., Goa, 2010(259)ELT 362(Bom.)]

Drawback on Re-export

Non-receipt of sale proceeds-Distinction between Section 74 and Section 75 of Customs Act, 1962-Section 74 ibid

comes into operation when articles are imported and, thereafter re-exported, such articles being easily identifiable whereas Section 75 ibid comes into operation when imported materials are used in manufacture of goods which are exported-Re-export of Imported Goods (Drawback and Customs Duties) Rules, 1995 cannot be invoked to deny drawback under Section 74 ibid for reasons of non-receipt or part-receipt of sale proceeds in

view of absence of any such enabling stipulation under Section 74 ibid itself or rules framed thereunder.

[Source: Commr. of Cus. Drawback Recovery Cell Vs. Phoenix Cement Ltd, 2010 (259) ELT 372 (Bom.)]

➤ Latest Notification/ News

GST Applicability

The government on Tuesday said it was not possible to fix

a time-frame for the introduction of the constitution amendment bill, which will facilitate rolling out the proposed Goods and Service Tax (GST). In a written reply to the Rajya Sabha. Finance Minister Pranab Mukherjee said the process requires consensus among various players and such an exercise would need time.



COMPANY LAW UPDATES

➤ Latest Notification/ News

Companies (Director Identification Number) Rules 2006, (Amendment), 2010

Revision of Form DIN-1 and Form DIN-3, effective from 05-12-2010

(i) in Form DIN- I , in the declaration, at the bottom of serial number 14, the following declarations shall be inserted namely :-

"I also confirm that I am not restrained/disqualified/removed of, for being appointed as Director of a company under the provisions of the Companies Act. 1956 including Sections 203,274 and 388E of the said Act.

* I further confirm that I have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court".

(ii) in Form DIN-3, wider Verification, the following Verifications shall be added namely :-

"It is hereby confirmed that the appointed Director(s) whose particulars are given above, has given declaration to the company that he/she is not restrained/disqualified/removed of, for being appointed as Director of a company under the provisions of the Companies Act. 1956 including Sections 203.274 and 388E of the said Act.

It is also confirmed that the appointed Director(s) whose particulars are given above. has given a declaration to the company that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or high Court or another Court".

[Source: MCA Notifications no. G.S.R. 849(E),October 15,2010]



**Additional fees revised
w.e.f. 5th December, 2010**

It has been decided to revise the additional fees payable as

per Section 611(2) of the Companies Act, 1956 (except for Form 5) as per below details with effect from 5th December 2010 :-

Period of Delay	Fixed rate of additional fee
Upto 30 days	Two times of normal filing fee
More than 30 days and upto 60 days	Four times of normal filing fee
More than 60 days and upto 90 days	Six times of normal filing fee
More than 90 days	Nine times of normal filing fee

In order to avoid payment of additional fees, please file within stipulated time.

[Source: PRESS RELEASE 8/2010 No. 2/7/2010-CL V; November 22, 2010]

Companies (Central Government's) General Rules and Forms (Third Amendment) 2010

As per the above-said amendment Act, the form-1 & Form-32 has been revised w.e.f. 05.12.2010.

[Source: MCA NOTIFICATION NO. 848(E), October 15, 2010]

Reopening/revision of annual accounts after their adoption in the annual general meeting

It has now come to the notice of the Ministry that few companies have been filing their annual accounts under section 220 more than once resulting into filing/availability of more than one such accounts in the Registry for a particular financial year.

The matter has been examined in the Ministry in detail and it has been concluded that keeping in view the provisions of section 220 of the Act read with Ministry's General

Circular 1/2003, a company cannot lay more than one set of annual accounts for a particular financial year unless it has reopened/revised such annual accounts after their adoption in the Annual General Meeting on the rounds specified in Ministry's circular Number 1/2003.

Accordingly, it is hereby directed that ROCs should keep a watch on such kinds of repeat filings of annual accounts and such accounts should not be accepted except in accordance with provisions of section 220 read with Ministry's General Circular 1/2003.

[Source: General Circular No: 5/2010, November 22, 2010]

SEBI UPDATES AND MISCELLANEOUS LAW UPDATES

➤ Latest Notification/ News

Major changes at the SEBI Board Meeting

The Board met on October 25, 2010 in Mumbai and took the following major decisions:

1. Preferential issue of equity shares or convertible securities or warrants to promoters and promoter group

The Board decided that in case of preferential issues, where any promoter or any promoter group entity has previously subscribed to the warrants of the company but failed to exercise the warrants, the promoters and promoter group shall be ineligible for issue of equity shares or convertible securities or warrants for a period of one year from the date of expiry of the currency /cancellation of the warrants. The Board further decided that if any member of the promoters/ promoter group has

sold shares in the previous six months, then the promoters/ promoter group would be ineligible for allotment on preferential basis.

2. Fixed Pay Date

The Board decided to mandate companies to have a pre-announced fixed pay date for payment of dividends and for credit of bonus shares.

3. Enhancement of limit for defining retail individual investors

The Board decided that the maximum application size for retail individual investors may be increased to Rs.2 lakh across all issues.

4. Public Announcement by Companies proposing to access the capital market

In order to draw the attention of investors about filing of Draft Offer Document (DOD) so as to elicit timely comments without adversely impacting the issue process, the Board decided that the issuer company may make a

simultaneous public announcement about filing of DOD.

5. Uniform/single payment option in rights issues

In order to ensure uniform treatment for all classes of investors in rights issues, the Board decided that only one payment option may be given by the issuer to all the investors i.e. either (i) part payment on application with balance money to be paid in calls or (ii) full payment on application. The Board also decided that where the issuer opts for part payment, it shall be incumbent on them to obtain approvals, if any, as may be necessary for the purpose.

6. Minimum Promoters' contribution in Further Public Offers (FPOs)

In order to enable listed issuers to have more flexibility in raising capital through various instruments, the Board decided that the requirement of promoters' contribution shall not be applicable to FPOs

where equity shares of the issuer are not infrequently traded in a recognised stock exchange for three years and the issuer has a track record of dividend payment for three years.

7. *Proforma Financial Statements in Offer Documents*

It has been observed that the company proposing a public issue, at times, acquires an entity just after the end of the latest disclosed financial year and as a result of such acquisition / restructuring, certain companies become direct or indirect subsidiaries of the issuer company. In order to understand the financial impact of such acquisition / restructuring on the financial statements of the issuer company, the Board decided to mandate the inclusion of a proforma financial statement in Offer Documents in cases where the acquisition is material for the issuer company. Materiality for this purpose would mean:

- a) the total book value of the assets of the acquired entity amounts to more than 20% of the pre-acquisition book value of the assets of the issuer company;

- b) the total income of the acquired entity amounts to more than 20% of the total income of the issuer company.

8. *Amendments to SEBI (FVCI) Regulations*

The Board approved amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000 with regard to the registration procedure for Foreign Venture Capital Investors (FVCIs). The key amendments include furnishing firm commitment letter from investor for investing at least USD 1 million, (introduced by SEBI vide Circular No.IMD/DOF-1/FVCI/CIR No.1/2009 dated July 03, 2009).

[Source: SEBI press release no. PR No.231/2010 dated October 25, 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.

[Source: SEBI circular SEBI/Cir/ISD/ 2 /2010, October 26, 2010]

Portfolio Managers – Clarification On Minimum Investment amount by clients, performance of portfolio and schemes

In order to bring about greater uniformity, clarity and transparency with regard to above issues, portfolio managers are advised to ensure the following;

- a) It is clarified that the first single lump-sum investment amount received as funds or securities from clients should not be less than `5 Lakh`.
- b) Portfolio Managers shall disclose the performance of portfolios grouped by investment category for the past three years as per the prescribed format. Portfolio Managers shall also ensure that the disclosure document is

given to all clients along with the account opening form at least two days in advance of signing of the agreement. In order to ensure that the clients have access to updated information about the portfolio manager, portfolio managers shall place the latest disclosure document on their website, wherever possible.

- c) Portfolio Managers shall not organize investment portfolios as “Schemes” akin to Mutual Fund Schemes while marketing their services to clients.

[Source: SEBI circular no. Cir. /IMD/DF/16/2010, November 02, 2010]

Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Fourth Amendment) Regulations, 2010

The Securities and Exchange Board of India Act hereby makes the following regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

- (i) These regulations may be called the Securities and

Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010.

- (ii) These regulations shall come into force on the date of their publication in the Official Gazette.

[Source: Gazette Of India Extraordinary Part Iii – Section 4 Published By Authority New Delhi, November 12, 2010 Securities And Exchange Board Of India Notification No. Lad-No. Lad-Nro/Gn/2010-11/19/26456 Dated 12.11.2010]

Amendments To Employees Provident Fund Scheme (EPFS) And Employees Pension Fund Scheme (EPEFS), 2008

As per the EPFS and EPEFS 2008, the Central Government had made it mandatory for International Workers (“IW”) to contribute to social security schemes like the EPFS, during their employment with an Indian establishment. Further, IW’s could withdraw the accumulated balance to their credit in the Fund once their employment in India was over. In case of EPEFS, withdrawal of pension amounts was permissible irrespective of the fact whether or not the IW is

from a country with whom India had a Social Security Agreement (“SSA”) or not.

The salient features of the amendments to EPFS 2008 are:

- Withdrawal of the accumulated balance to the credit of the IW will be permissible only on retirement from service after the age of 58 years. However, early withdrawal is allowed only if the IW is suffering from certain specified diseases, or he is incapacitated or as otherwise specified in the relevant SSA.
- Salary received by an IW in foreign currency should be converted using Telegraphic Transfer (“TT”) buying rate offered by State Bank of India (SBI) as on the last working day of the month for which the salary is due.
- Accumulated balance of contribution relating to the IW will be credited to his India bank account only.

The salient features of the amendments to EPEFS 2008 are:

- No contribution by the Government of India.
- IW's cannot withdraw pension contribution if they are from countries with whom India does not have a SSA.

Consequences of the recent amendments

- The amendments may cause hardship to IWs from non-SSA countries.
- If IW's are not permitted to withdraw the EPFS amount until the age of 58, the practical aspects of how

they can withdraw the money from their bank account was not addressed.

[Source: Notif No. GSR 148 and 149, both dated 03.09.2010 issued by Ministry of Labour and Employment]



FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS

➤ Latest Notification/ News

Liberalised Remittance Scheme- FAQs

The Reserve Bank of India had announced a Liberalised Remittance Scheme (the Scheme) in February 2004 as a step towards further simplification and liberalization of the foreign exchange facilities available to resident individuals. As per the Scheme, resident individuals may remit up to USD 200,000 per financial year for any permitted capital and current account transactions or a combination of both. The RBI has recently issued a FAQ clarifying the details of the Scheme. The salient issues addressed in the FAQ are as follows:-

Q.1. What is the Liberalised Remittance Scheme of USD 200,000?

Ans. Under the Liberalised Remittance Scheme, all

resident individuals, including minors, are allowed to freely remit up to USD 200,000 per **financial** year (April – March) for any permissible current or capital account transaction or a combination of both.

Q.2. Please provide an illustrative list of capital account transactions permitted under the scheme.

Ans.. Under the Scheme, resident individuals can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the Scheme.

Q. 3. What are the prohibited items under the Scheme?

Ans. The remittance facility under the Scheme is not available for the following:

- i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000;
- ii) Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
- iii) Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;
- iv) Remittance for trading in foreign exchange abroad;
- v) Remittance by a resident individual for setting up a company abroad;

vi) Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;

vii) Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories”, from time to time; and

viii) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Q. 4. Are resident individuals under this Scheme required to repatriate the accrued interest/dividend on deposits/investments abroad, over and above the principal amount?

Ans. The resident individual investors can retain and re-invest the income earned on investments made under the Scheme. The residents are not required to repatriate the funds or income generated out of investments made under the Scheme.

Q. 5. Can remittances under the facility be consolidated in respect of family members?

Ans. Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.

Q. 6. Can one use the Scheme for purchase of objects of art (paintings, etc.) either directly or through auction house?

Ans. Remittances under the Scheme can be used for purchasing objects of art subject to compliance with the extant Foreign Trade Policy of the Government of India and other applicable laws.

Q.7. Can remittance be made under this Scheme for acquisition of ESOPs?

Ans. The Scheme can also be used for remittance of funds for acquisition of ESOPs.

Q.8. Is this scheme in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000/- for a block of 5 calendar years)?

Ans. The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/GDR.

Q.9. Is this Scheme is in addition to acquisition of qualification shares (i.e. USD 20,000 or 1% of paid up capital of overseas company, whichever is lower)?

Ans. The remittance under the Scheme is in addition to acquisition of qualification shares.

Q.10. Can a resident individual invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?

Ans. A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc. under this Scheme. Further, the resident can invest in such securities through the bank account opened abroad for the purpose under the Scheme.

Q.11. Can an individual, who has availed of a loan abroad while as a non-resident Indian can repay the same

on return to India, under this Scheme as a resident?

Ans. This is permissible.

Q. 12. Are there any restrictions on the frequency of the remittance?

Ans. There is no restriction on the frequency. However, the total amount of foreign

exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 200,000.

Q. 13. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

Ans. Once a remittance is made for an amount up to USD 200,000 during the **financial year**, he would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

[Source: RBI dated September 17, 2010]

CORPORATE FINANCE

➤ Latest News

PRIVATE EQUITY

3i Group Leads Rs 1,200Cr Investment in GVK Energy

GVK Energy Ltd, a subsidiary of GVK Power & Infrastructure Limited, has raised Rs 1,200 crore (\$274 million) in private equity funding round led by 3i India Infrastructure Fund. The deal to pick up a 21.1% stake in the power arm of the infrastructure group values the unit at nearly Rs 5,700 crore (\$1.3 billion).

3i would be investing Rs 800 crore in what will be the infrastructure firm's second investment the power sector after Adani Power. [Source-

The Economic Times, Nov.08, 2010]

QInvest Picks Up 28% In Asian Business Exhibition

The IPO-bound, mid-sized exhibition and conferences company, Asian Business Exhibition & Conferences Ltd (ABECL, has got a validation from Gulf-based investor, QInvest. The Qatar-based investment bank has picked up a 28% stake in ABECL. The investment size was not disclosed. QInvest will take a seat on ABECL's Board of Directors.

[Source- Business Standard, Nov.11, 2010]

ChrysCap Sells Big Chunk in Amtek India At 20% Haircut

Private equity firm ChrysCapital has sold close to four-fifth of its 8.17% stake in auto component firm Amtek India with an estimated haircut of around 20%. This comes close on the heels of a similar part exit by another PE firm, Warburg Pincus, which sold over half of its 7.45% stake in the firm with an estimated 63% loss.

[Source:-The Mint, November 23,2010]

VENTURE CAPITAL

Mumbai Angels Invests In Noida-Based Mobile App Company Mobiquest

The company uses software-as-a-service model to provide mobile based enterprise business automation applications.

Mumbai Angels, a leading group of angel investors in India, has invested in Mobiquest, a Noida based mobile enterprise platform company. The company uses software-as-a-service model to provide mobile based enterprise business automation applications. The company claims that it has created more than 50 mobile applications across industries till now.

The angel investors has invested about \$400,000 by way of preferential allotment, where monies will be

disbursed based on milestone achievements. Joshi declined to confirm details of the invested amount.

[Source: Business Standard, November 10,2010]

Realty Transaction Services Firm Raises \$12M from Foundation, Helion

Venture capital investors are finding new avenues to tap India's domestic consumption story.

In the latest deal, real estate transaction services firm Agni Property Group has raised \$12 million from Silicon Valley based venture capital firm Foundation Capital and India based Helion Venture Partners. Both VC firms are investing \$6 million each for a minority stake in the company. Foundation's AshuGarg and Helion's Sanjeev Aggarwal are joining the board of the company as part of the deal.

[Source: The Economic Times, November 11,2010]

Catamaran, Accel Investing Rs 5Cr In Test Prep Firm Ace Learning

N R Narayana Murthy's Catamaran Ventures, which struck its investing debut with SKS Microfinance (India's first microfinance firm to go public), is making its second investment in Bangalore-based Ace Creative Learning Pvt Ltd, which provides educational support services to schools and colleges.

Accel Partners is the co-investor in the early stage investment round which will see both venture firms contributing Rs 2.5 crore each in Ace. This will be Accel's fourth investment in 2010.

[Source: The Economic Times, November 16,2010]

Intel Capital Invests \$3M in Bangalore's Althea Systems

Intel Capital, the corporate venture capital arm of chipmaker Intel Corporation, has invested a series A funding of \$3 million in Bangalore-based online video startup Althea Systems. The deal, announced at the 11th Annual Intel Capital CEO Summit in Huntington Beach, California, is part of the \$77-million funding across 18 startups announced today. Intel Capital has invested \$247 million in 2010 across various sectors.

[Source: The Economic Times, November 17, 2010]

Investment Banking

Religare Capital Markets' African Safari with New Deal

Religare Capital Markets (RCML), the investment banking and institutional securities arm of Religare Enterprises, promoted by Malvinder Singh and

Shivinder Singh, announced the acquisition of the UK operations of Barnard Jacobs Mellet (BJM UK), it said in a stock exchange filing.

BJM UK is a highly-rated distribution platform for South African equities in the UK, serving over 100 institutional clients. The business will operate under the Religare brand and will be integrated into RCML's rapidly expanding emerging markets platform.

[Source: The Mint, November 22, 2010]

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