R. N. Marwah & Company
Chartered Accountants
Est. 1946

A MEMBER OF GENEVA GROUP INTERNATIONAL

www.rnm.in

RNM ALERT

ISSUE NO.7
MAY 01, 2008

INSIDE THIS ISSUE

U.N. Marwah

Dear Readers,

The RBI Annual Policy for the year 2008-09 was recently announced by Dr. Y.V. Reddy, Governor as per which Corporate activity experienced some moderation in growth relative to the recent past but continued to remain healthy during 2007-08. On a year-on-year basis, inflation based on the wholesale price index (WPI) stood at 7.4 per cent at end-March 2008 as compared with 5.9 per cent a year ago. The inflation numbers continue to be a worry for the economy going forward.

Net capital inflows surged by 172 per cent to US $ 81.9 billion during April-December 2007 as compared with US $ 30.1 billion a year ago. While net foreign direct investment (FDI) increased by US $ 8.4 billion from US $ 7.6 billion in April- December 2006. The FDI flows are showing resilience, however, fund managers are expected to be more cautious in their approach.

To suck out the excess liquidity in the market, the Governor has increased the Cash Reserve Ratio (CRR) by 25 basis points w.e.f. May 24, 2008 to 8.25 percent. We hope in two quarters time some positive cues come out of these actions on the part of the RBI.

The Finance Minister on the floor of the House on April 29, 2008 has announced certain further changes to the Finance Bill, 2008. Among the changes the major concession given is to the IT/ ITES sector by extending the benefit under the STPI scheme by another year to F.Y. 2009-10.

The **RNM ALERT** is also available on our website www.rnm.in along with lots of other interactive content.

U.N. Marwah
Senior Partner
On behalf of the Editorial Team

[Service Tax]

Refund of Service Tax on Three more Services to Exporters

With Notification No. 17/ 2008-Service Tax dated 1st April, 2008 further amendments have been made in the notification of the Government of India in the Ministry of Finance (Department of Revenue) **No.41/2007-Service Tax**, dated the 6th October, 2007, which provides for the exporters to claim for refund of service tax paid on 12 nominated services while making export. Now with this Notification three more taxable services have been included in the list. The new services are

i) services provided by a custom house agent in relation to export goods exported by the exporter [custom house agent];

ii) (a) services provided in relation to collection of export bills, (b) services provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges [Banking and other financial service];

iii) Services provided by a commission agent, located outside India, and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him [Business Auxiliary Service].

N.B. :- In our earlier RNM ALERT Vol 5 Notification No.41/2007-Service Tax has been discussed

Leading Service Tax Case Laws

Credit Of Input Service Allowed Towards Payment Of Service Tax On GTA

The Appellant was a recipient of GTA services, required to pay service tax on the same and they paid the service tax by utilization of the Cenvat credit on GTA services. The Appellant stated that under Rule 2(p) of the CENVAT Credit Rules, 2004, the GTA service is very much an output service even though the tax is paid and credit is earned by the recipient on this service itself. Further they stated that the CENVAT Credit on service tax is permitted to be utilized for payment of service tax on any output service.

Held- The Tribunal held in favour of the assessee that the Appellant is clearly entitled to utilize the credit available to them in respect of the input service towards payment of the service tax on GTA services which is an output service by definition.

[Bhushan Power & Steel Ltd. V. C. Ex., Cus. & Service Tax, BBSR-II, 2008 (10) STR 18 (Tri- Kolkata)]

Payback Of Credit Is Not Required When Inputs Are Returned To Supplier

An assessee is not required to reverse the credit availed or pay back the same when any inputs, in relation to the receipt of which service tax was availed, are returned back and not used in the manufacture of final products or output service. Sub-rule (5) of Rule (3) of the

CENVAT Credit Rules, 2004 provides for payment of an amount to the Department equal to the credit availed in respect of any inputs or capital goods when they are removed as such from the factory of the assessee. There is no similar requirement in respect of service tax associated with the return of input goods or capital goods. Further, Rule 14 of the CENVAT Credit Rules provides for recovery of CENVAT Credit taken or utilized wrongly. Furthermore clarification DOF No. 334/1/2007-TRU dated 28-2-2007 amply speaks that the assessee are not required to payback the credit availed under GTA service for transport of inputs into the factory which were found to be sub-standard and returned to the supplier.

[Chitrakoot Steel & Power Pvt. Ltd. V. Commr. Of C. Ex., Chennai, 2008 (10) STR 118 (Tri- Chennai)]

Earlier Entry Does not Cover the Subsequently Introduced Entry If Earlier Entry Is Not Amended

In this matter Technical know-how fee and royalty was paid to foreign collaborator. These activities were covered under the service of transfer of intellectual property rights w.e.f. 10-9-2004 and the appellants are paying service tax on the same with effect from the said date. Department in this matter asked for the service tax on the same activities under the heading of "Consulting Engineer Service". The Tribunal upheld the findings of the Tribunal in the case of BCCI v. CST, Mumbai [2007(7) STR 384 (Tri. Mumbai)] in which it observed that when a new entry is introduced covering a particular activity without amending the earlier entry, it cannot be said that the earlier entry covered the subsequently introduced entry.

Our Comment: Consulting engineering services were brought under service tax w.e.f. 7-7-1997 and the Intellectual Property Services were brought under the service tax net w.e.f. 10-9-2004. Going by this judgment, if an assessee was asked to pay service tax for Technical know-how fee and royalty paid to foreign collaborator under the heading of "consulting engineering services" and the assessee paid the same, then such demand was wrong and assessee can make claim for refund but for claiming refund from the Department, one has to refund the amount of service tax to the service receiver other wise his claim can be denied on the principle of "unjust enrichment".

[Commissioner Of St, Ahmedabad V. Trumac Engg. Co. Pvt. Ltd., 2008(10) Str 148 (Tri- Ahmd.)]

[Income Tax]

Proposed Amendment to Finance Bill, 2008

SECTION 10(*26AAB*)

Exemption of income of an agricultural produce market committee

1. With effect from the assessment year 2009-10, any income of an agricultural produce market committee/board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce, will be exempt from tax.

SECTION 10(*29A*)

Exemption to income of Coir Board

2. Exemption provided to Coir Board made effective from 1-4-2002, instead of 1-4-2009.

SECTIONS 10A AND 10B

Exemption under sections 10A and 10B extended by one year

3. Exemption available under sections 10A and 10B has been extended by one more year. Consequently, these exemptions will now be available up to the assessment year 2010-11.

SECTION 40(*a*)(*ia*)

TDS default

4. Interest, commission, brokerage, rent, royalty, fees for technical/professional services payable to a resident or amounts payable (for carrying out any work contract) to a resident contractor/sub-contractor are subject to tax deduction under different sections of Chapter XVII-B. If tax is deductible but not deducted or if tax is deducted but not deposited (or deposited late) with the Government, then these expenses are not allowed as deduction according to the provisions of section 40(*a*)(*ia*). These provisions were incorporated by the Finance (No. 2) Act, 2004 with effect from the assessment year 2005-06.

The scheme of disallowance under section 40(*a*)(*ia*) has been modified with retrospective effect from the assessment year 2005-06 on the following lines—

Tax is deductible but not deducted

- No deduction in the current previous year
- If tax is deducted in any subsequent year, the expenditure will be deducted in the year in which TDS will be deposited by the assessee with the Government.

Tax is deductible (and is so deducted) during the last month (*i.e.*, in the month of March) of the previous year but it is not deposited on or before the due date of submission of return of income under section 139(1)

- No deduction in the current previous year
- If tax is deposited with the Government after the due date of submission of return of income, the expenditure will be deductible in that year in which tax will be deposited.

Tax is deductible (and is so deducted) during any month but other than the last month (*i.e.*, any time before March 1) of the previous year but it is not deposited on or before March 31 of the previous year

- No deduction in the current previous year
- If tax is deposited with the Government after the end of the current previous year, the expenditure will be deductible in that year in which tax is deposited.

SECTION 44AB

Compulsory Tax Audit

5. From the assessment year 2008-09, audit report under section 44AB should be obtained on or before September 30 of the assessment year.

SECTION 80-IB

Deductions to industrial undertakings other than infrastructure under-takings

6. If an undertaking begins refining of mineral oil on or after April 1, 2009, deduction will be allowed to such undertaking only if the following conditions are satisfied—

- It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least 49 per cent of the voting rights.
- It is notified by the Central Government before June 1, 2008.
- It begins refining during April 1, 2009 and March 31, 2012.

SECTION 115JB

Minimum alternate tax

7. With effect from the assessment year 2001-02, the amount of deferred tax and provision therefor, if debited to profit and loss account, shall be added back to the net profit to convert it into book profit. Conversely, the amount of deferred tax, which is credited to the profit and loss account, shall be deducted from the net profit to find out book profit.

SECTION 115WE

Fringe benefit tax - Notice for scrutiny assessment

8. Notice for scrutiny assessment shall be served on the assessee within a period of 6 months from the end of the financial year in which return is furnished. This amendment is applicable from April 1, 2008.

SECTION 194C

Deduction of tax at source - Payment to contractors/sub-contractors

9. With effect from June 1, 2008, an association of persons/body of individuals, whether incorporated or not, shall be liable to deduct tax at source under section 194C(1) if the books of account of the association of persons/body of individuals are required to be audited under section 44AB(*a*)/(*b*) during the immediately preceding financial year.

SECTION 251

Commissioner (Appeals)

10. In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, the Commissioner (Appeals) can (with effect from April 1, 2008) confirm, reduce, enhance or annul the assessment after taking into consideration the following—

- The material and other information produced by the assessee before the Settlement Commission.
- The results of the inquiry held by the Settlement Commission.
- The evidence recorded by the Settlement Commission in the course of proceedings before it.
- Such other material as may be brought on his record.

SECTION 292BB

Notice deemed to be valid in certain circumstances

11. Section 292BB has been inserted with effect from April 1, 2008 to provide that where an assessee has appeared in any proceeding or co-operated in any inquiry related to an assessment or reassessment, it shall be deemed that any notice under any provision of the Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such an assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was—

(*a*) not served upon him; or

(*b*) not served upon him in time; or

(*c*) served upon him in an improper manner.

However, the provisions of section 292BB shall not be applicable where the assessee has raised the aforesaid objections before the completion of such assessment or reassessment.

Quoting PAN in TDS returns made mandatory

The Income Tax Department has made it mandatory for the employers to quote permanent account number (PAN) of all of employees and parties from whom tax is deducted while filing quarterly TDS or TCS returns.

All tax deductors, collectors are required to file the TDS or TCS returns in Form No 24Q (for salaries), Form No 26Q (for payments other than salaries) or Form No 27EQ (for TCS).All tax deductors, collectors are required to file the TDS or TCS returns in Form No 24Q (for salaries), Form No 26Q (for payments other than salaries) or Form No 27EQ (for TCS).The enhanced limits will be applicable for and from the quarter ending March 31, 2008

The Ministry also asked the employees and other parties to provide correct PAN to their employers and tax deductors, failing which they will not only have difficulty in getting credit of TDS/TCS in their income tax assessments but will also face penal proceedings under the Income Tax Act.

Hospitals are not 'industrial units'

Hospitals are not 'industrial units'- the Madras High Court recently ruled that an amalgamated company, if a hospital, is not entitled to carry forward and set off unabsorbed depreciation of amalgamating company, as hospitals are not 'industrial undertakings' within the meaning of section 72A(7)(aa) of Income-Tax Act.

In the relevant case, both the amalgamated company (assessee) and amalgamating companies, were engaged in business of hospital. During the previous year, assessee set off unabsorbed depreciation of amalgamating company. The assessing officer did not allow the claim of assessee by initiating reassessment proceedings on the ground that the hospital is

not an 'industrial undertaking' for claiming setoff.

According to the assessee, hospital is an 'industrial undertaking' within the meaning of Industrial Disputes Act and hence eligible for set off of unabsorbed depreciation.

The High Court held that if IT Act does not contain any definition for a disputed term, then only, for appreciation of the case, other Acts can be referred, which bear the definition for the same terms.

The term 'industrial undertaking' is well defined in section 72(A)(7)(aa) of IT Act which does not include hospital as 'industrial undertaking' and so, the assessee is not eligible for set off of unabsorbed depreciation of amalgamating company**.**

No tax in India on sale abroad: AAR

In a recent ruling, the Authority for Advanced Ruling (AAR), a quasi judicial body for settling tax dispute, clarified that tax is not liable to be deducted from the payments made to a non-resident, if the transaction is a sale of equipment and repairs that took place outside India.

The AAR gave this order on an application filed by the Airports Authority of India (AAI) in relation to its transactions with a US-based corporate, Raytheon. However, the AAR said tax is required to be deducted on software maintenance contract AAI had with Raytheon.

The agreement between AAR and Raytheon was for supply of equipment and training facilities. It also had an agreement for hardware repair and software maintenance.

Tax Implication of Mergers & Acquisition

Over the past few years, India Inc has witnessed a tremendous surge in M&A activities both in the domestic as well as the international space. Further, domestic M&A deals have also shown significant increase depicting the inherent strength of the Indian economy.

Transfer of past losses and depreciation:

To facilitate the revival of loss-making units, tax laws provide for the transfer of unabsorbed losses and depreciation.

Further, as an additional incentive, the law provides for a revival of the eight-year period for the carry forward of unabsorbed losses. This concession is, however, available only in the case of mergers of companies engaging in manufacturing activities, telecommunications, manufacture of computer software, specified banks, power generation companies, and so on. Interestingly, most of the activities in the service sector, which forms the heart of the Indian economy, are not covered under this provision. For example, the merger of advertising companies or private airline companies are not entitled to this concession.

In addition to the above, there are cumbersome conditions to be satisfied for the unabsorbed loss and depreciation transfer. The law requires the merging company to carry on the business for at least three years prior to the merger and for the merged company to carry on the business for at least five years thereafter. Further, it also requires continuity ownership of a portion of the fixed assets of the merging company for a specified period before and after the merger. To further boost M&As, the scope of Section 72A should be extended. Also, the above conditions should be liberalised.

Change in shareholding — Benefit restricted:

For a closely-held Indian company, if there is any change in shareholding that takes voting rights beyond 51 per cent, the company is not entitled to carry forward and set off past losses. While the benefit is not lost, if there is a change in the shareholding of an Indian company, which is a subsidiary of foreign company — due to an international merger/demerger — the same is not available in a scenario where the change in the shareholding is due to a merger/demerger in India.

International mergers of two Indian-owned companies:

As most commonly understood, the Indian Income tax Act provides for several tax concessions to mergers/demergers of two Indian companies. Thus, when a transfer of shares of a company (whether Indian or foreign) happens in an Indian merger, there is a specific exemption under the Income Tax Act on such transfer from capital gains. However, the same is not true for foreign company mergers; that is,
when two foreign companies merge and the owner of merging foreign company is an Indian company. This triggers serious Indian tax issues.

Depreciation on goodwill:

Based on the present provision, tax depreciation on 'acquired goodwill' (difference between consideration paid and fair value of assets acquired) is a contentious issue, the better view being that the same is not allowable. In countries such as the US and the Netherlands, for tax purposes 'goodwill' costs are allowed to be amortised over a specified period. Since business acquisitions are a very common mode of corporate actions, the allowability of depreciation on goodwill will only integrate the Indian tax laws with international practices

MAT credit setoff:

Companies have to pay Minimum Alternate Tax (MAT) on their book profits at 10 per cent if tax payable is less than 10 per cent of the book profit. The difference between MAT and normal tax is allowed to be carried forward (not beyond seven years), and can be set off against the tax payable by the company in the year in which it pays normal tax. The Indian tax laws do not expressly provide for carry forward of MAT credits in case of merger/demergers. Presently there are ambiguous interpretations in this regard and clarity in the law on this point will be appreciated. □

Transfer of tax holidays:

The tax law expressly provides for the transfer of tax holidays under Section 10A/10B and

SEZs in the case of mergers/demergers. However, the tax laws are silent in the case of transfer of these benefits for sale of business**.**

No Tax On Demat Bond Trading

R.H. Patil Committee report on corporate debt market, the government today waived the tax to be deducted at source (TDS) on the dematerialized trading of corporate bonds listed on recognized stock exchanges. Further, to create a nation-wide market, the Government has urged the empowered committee of State Finance Ministers to work out a uniform stamp duty structure for bonds. Corporate bonds are thinly traded as the varying stamp duty and TDS rates across States increase the cost **of** transaction, thereby driving the retail investors towards fixed deposit schemes of mutual funds and banks.

MAT On Real Income Only

The Mumbai Tribunal has held that Minimum Alternative Tax (MAT) be levied on real book profits which have been earned by the companies. It can't be levied on the artificial income, which has not accrued to the companies, but has been credited to the profit and loss as per the accounting policies. In the instant case, the assessee was entitled by a scheme of the government, to defer the payment of the sales tax collected, and was crediting the same to separate account as deferred liability. In the relevant year it revalued the liability at its present value and credited the difference to the profit and loss account. While computing book profits u/s 115JA, it deducted the revaluation profit. The Assessing officer disallowed the same. The Tribunal observed that items not having the character of the income should not form part of the book profit, even though such items are credited to the profit and loss account.

Leading I.T. Case Laws

Gulf Oil Corporation Ltd. v. Asstt. CIT (Hyd.) [2008] 111 ITD 124 (Hyd.)

FACTS –

- A loss return was filed by the assessee.
- Sec. 115JB was attracted.
- Assessee took net profit after treatment of extra ordinary items (advisory fees for sale of investment) as base for computing book profit.
- AO was of the view that net profit for computing book profit is the net profit before adjusting extra ordinary items.

HELD –

- As per the Part II & III of Schedule VI there is nothing like P&L Appropriation Account.
- All the items shown in Appropriation Account are part of P&L Account.
- AS-5 just says that Extra Ordinary Items & Prior Period Items are to be disclosed separately. It does not say that it is not the part of P&L Account.

- So the balance of P&L Account transferred to Balance Sheet should be taken as base for computing Book Profit.

Commissioner of Income Tax Vs Mrs. Roshan D. Nariman (2008) 169 Taxman 1

Section 271(1)(c), No concealment or penalty when assessee disclose his/her income in part IV of income tax return .

For this the assessee taken the reference of the Supreme Court judgment in CIT Vs Anwar Ali (1970) 76ITR 696, "it is for the revenue to establish that the assessee has concealed income or furnished inaccurate particulars."

Jayashree Tea & Industries Ltd Vs Commissioner Of Income Tax (2008) 169 Taxman 6

Section 37(1) No, deduction allowable on the basis of any judgment of any case when originally in the return of income assessee didn't claim any deduction and the assessment has been completed.

In this case assessee didn't claim any deduction on account of leave encashment liability but on the basis of decision taken by SC in Bharat Earth Movers Vs CIT (2000)245 ITR 428 he filed revision application claiming deduction of liability on account of leave encashment.

CIT v. United Breweries Ltd. [2008] 166 TAXMANN 297 (KAR.)

FACTS –

- Assessee advanced loans to its subsidiaries company on which interest was receivable.
- Interest was not received but accounted on accrual basis and offered to tax.
- Application to court was made for amalgamation.
- After the application was made the assessee write off the amount of interest due as bad debts u/s36(1)(vii).
- Later order was served that amalgamation is effected retrospectively and the appointed date for amalgamation is prior to the date of write off of bad debts.
- AO was of the view that retrospective effect given to amalgamation will nullify the decision of writing off interest as bad debts as there were no debts at the time of write off.

HELD –

- An order of the court accepting amalgamation would wipe out the relationship in terms of the retrospective effect of the order. However, it would not nullify a decision prior to the order was made.

Mrs. Catherine Thomas v. Deputy CIT (Cochin) [2008] 111 ITD 132 (Cochin)

FACTS –

- Compensation was given to assessee on compulsory acquisition of immovable property.
- Assessee filed petition for enhanced compensation.

- Sub Court enhanced the compensation and also awarded interest on enhanced amount.
- Assessee received the amount and deposited the into bank for obtaining bank guarantee.
- AO taxed the whole amount u/s 45(5) and u/s 56(5). Interest was taxed on accrual basis.
- Assessee was of the opinion that receipt of amount on presentation of BG does not constitute a receipt as it is under the control of assessee. According to him AO went wrong in bringing to tax the interest on enhanced amount without considering pendency of the appeal.

HELD –

- U/S 45(5) it is provided that additional compensation will be deemed to be the income in the hands of the recipient even if the actual happens to be a person different from the original transferor i.e. bank.
- Interest to be taxed on accrual basis not on lump sum basis.

Commissioner of Income Tax Vs Best Plastics (P) Ltd (2008) 169 Taxman 4

Section 119, read with 260A, instruction and any circulars issued by the CBDT are binding on officers of department.

Nipun Mehrotra v. Asstt. CIT [2008]110 ITD 520 (Bangalore)

FACTS –

- Assessee claimed deduction U/S 54F for the Assessment Year 2000-01.
- Flat was purchased for which some part of consideration was paid before the date of filling return but some after the date of filling return.
- AO disallowed the said deduction because according to the provision of Capital Gain Account Scheme the assessee should have deposited the sum before the date of filling return.

HELD –

- Section 54(2) and 54F(4) were introduced to dispense with rectification of assessments in case the tax payer fails to acquire the corresponding new asset.
- Hence if the asset is purchased before the date of filling return then there is no need of rectification.

Asstt. CIT (Ludhiana) v. Mahavir Spg. Mills Ltd. [2008]110 ITD 211 (CHD.)

FACTS –

- Assessee claimed deduction U/S 80HHC in respect of export turnover including inrespect of 100% EOU for which it had claimed exemption under Section 10B.
- AO disallowed the claim on the ground that when the entire income of the said EOU is exempt U/S10B then it was not eligible to claim any other deduction.

HELD –

- Provisions of Sec 80HHC state that deduction is to be allowed to the profits which have been derived from export therefore export turnover to be considered while working out deduction is that turnover which is relevant for earning the profit from export.
- Assessee admitted that the profit for which exemption U/S10B had been claimed was not included in the profit to claim deduction U/S80HHC.
- Therefore the turnover which was related to the profit eligible for deduction U/S10B could also not be included in the turnover considered for the purpose of deduction U/S80HHC.

Commissioner of Income Tax v. Infosys Technologies Ltd.[2008] 297 ITR 167 (SC)

Section 17(1), 17(2) (iiia), 192, 201(1)(ia) - No TDS on ESOPs by transferring shares through trust.

In this case assessee created trust for benefit of employees and transferring non transferable shares to trust. Shares were to be transferred to employees on the basis of their performance subject to lock-in-period. As per the Apex Court decision these stock options are not covered under the definitions of perquisites and exempt from FBT.

Commissioner Of Income Tax (TDS) Vs Eli Lilly And Co I.P.Ltd.(2008)297 ITR 300 (Delhi)

Section 192- no obligation of Indian employer to deduct TDS on accrued income expatriate executives earned from outside India.

It was noted that even though some salary might have accrued outside India, the vital incidence of payment of the salaries to them abroad had not actually been made by the assessee. The assessee is not liable to deduct TDS.

Synco Industries Ltd Vs Assessing Officer (Income –Tax) And Another (2008) 299 ITR444(SC)

Section 80A, 80AB, 80B (5), 80HH, 80I special deduction to be made only after computing "Gross Total Income".

In this case assessee having 2 industrial units, 1 in oil and other in chemicals, one unit is earning profit and other is a loss unit. The net result is NIL, assessee not entitled to special deduction.

[FEMA]

Overseas Investment by Mutual Funds- Liberalisation

The Reserve Bank of India vide A.P. (DIR Series) Circular No. 34 dated April 03, 2008 has made certain liberalizations in the overseas direct investment front. With a view to providing greater opportunity for investment overseas, the aggregate ceiling for overseas investment by Mutual Funds registered with the

Securities and Exchange Board of India (SEBI) has been enhanced from USD 5 billion to USD 7 billion with immediate effect. The existing facility to allow a limited number of qualified Indian Mutual Funds to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI, shall continue.

Liberalised Remittance Scheme for Resident Individuals- Reporting

The Reserve Bank of India vide A.P. (DIR Series) Circular No. 36 dated April 04, 2008 has tightened the reporting requirement of banks in respect to the USD 200,000 Liberalised Remittance Scheme. Banks were required to furnish information on the number of applications received and total amount remitted under the Liberalised Remittance Scheme, on a quarterly basis, in the prescribed format. It has now been decided, with effect from April 2008, to collect the information in respect of the Scheme on a monthly basis instead of quarterly basis. The statement should reach the RBI on or before fifth of the following month to which it relates.

Mandatory Electronic Payment of tax by certain categories

The Reserve Bank of India has vide DGBA.GAD No H. 10875/42.01.038/2007-08 dated April 10, 2008 has issued instructions to relevant bankers in regard to the e-payment of taxes. The relevant extracts are as follows:-

1. The CBDT have made electronic payment of taxes mandatory for the following categories of taxpayers w.e.f. 01.04.2008 :
   a. A company
   b. A person (other than a company), to whom provisions of Section 44AB are applicable.

2. In this regard the following instructions may be kept in mind while implementing the Government Notification:
   i) the status of all corporate taxpayers can be identified from the name itself. Further, the 4th digit of the PAN of all corporate assessee would necessary be "C". **Physical challans from such assessees shall not be accepted across the counter.**

   ii) In case of tax payers covered under Section 44AB, there should be no insistence of any proof of eligibility to pay tax through physical challans at the bank counters. The responsibility of making e payment rests primarily with the taxpayer. Hence, the word of taxpayers should be taken as final.

   iii) the acknowledgement for e-payment should be made available immediately on screen by the
   bank concerned.

   iv) the transaction id of e-payment should be reflected in the bank's statement.

Amendment to FDI Scheme- Credit Information Companies and Commodity Exchanges

The RBI has vide AP (DIR Series) Circulars no. 40 and 41 both dated April 28, 2008 given due effect to the earlier Press Notes issued by the Government of India vide Press Note 1 (2008) and Press Note 2 (2008) both dated March 12, 2008 in regard to the enhancement of the limit of FDI in regard to Credit Information Companies and Commodity Exchanges respectively. The FDI limits are as follows:-

Credit Information Companies

i)The aggregate Foreign Investment in Credit Information Companies would be 49%.
ii) Foreign Investment upto 49% would be allowed only with the prior approval of FIPB and regulatory clearance from RBI.
iii) Investment by SEBI Registered FIIs would be permitted only through purchases in the secondary market to an extent of 24%.
iv) Investment by SEBI Registered FIIs would be within the overall limit of 49% for Foreign Investment.
v) No FII can individually hold directly or indirectly more than 10% of the equity.

Commodity Exchanges

i) There would be a composite ceiling of 49% Foreign Investment, with a FDI limit of 26% and an FII limit of 23%.
ii) FDI will be allowed with specific approval of the Government.
iii) The FII purchases in equity of Commodity Exchanges will be restricted only to the secondary markets.
iv) Foreign Investment in Commodity Exchanges would also be subject to compliance with the regulations issued, in this regard, by the Forward Market Commission.

Relaxation for Bids in foreign currency for projects in India

The RBI has vide AP (DIR Series) Circulars no. 39 dated April 28, 2008 on a review, and as a measure for procedural simplification, decided in consultation with Government of India, that the prior permission of Administrative Ministry / Authorization from Central Government may not be necessary for International Competitive Bidding (ICB). Accordingly, persons resident in India are now permitted to incur liability in foreign exchange and to make or receive payments in foreign exchange in respect of global bids for projects to be executed in India without insisting on prior approval of the concerned Administrative Ministry for the International Competitive Bidding.

[SEBI]

Norms for Real Estate Mutual Fund Schemes Notified

SEBI, vide Notification No. LAD-NRO/ GN/ 2008/ 03/ 123042 dated April 16, 2008 has amended SEBI (Mutual Funds) Regulations, 1996 to permit mutual funds to launch REMFs. The salient features of REMFs are as under:

- Existing Mutual Funds are eligible to launch real estate mutual funds if they have adequate number of experienced key personnel/ directors.
- Sponsors seeking to set up new Mutual Funds, for launching only real estate mutual fund schemes, shall be carrying on business in real estate for a period not less than five years. They shall also fulfill all other eligibility criteria applicable for sponsoring a MF.
- Every real estate mutual fund scheme shall be close-ended and its units shall be listed on a recognized stock exchange.
- Net asset value (NAV) of the scheme shall be declared daily.
- At least 35% of the net assets of the scheme shall be invested directly in real estate assets. Balance may be invested in mortgage backed securities, securities of companies engaged in dealing in real estate assets or in undertaking real estate development projects and other securities. Taken together, investments in real estate assets, real estate related securities (including mortgage backed securities) shall not be less than 75% of the net assets of the scheme.
- Each asset shall be valued by two valuers, who are accredited by a credit rating agency, every 90 days from date of purchase. Lower of the two values shall be taken for the computation of NAV
- Caps will be imposed on investments in a single city, single project, securities issued by sponsor/associate companies etc.
- Unless otherwise stated, the investment restrictions specified in the Seventh Schedule shall apply.
- No mutual fund shall transfer real estate assets amongst its schemes.
- No mutual fund shall invest in any real estate asset which was owned by the sponsor or the asset management company or any of its associates during the period of last five years or in which the sponsor or the asset management company or any of its associates hold tenancy or lease rights.
- No mutual fund shall invest in –
    - any unlisted security of the sponsor or its associate or group company ;
    - any listed security issued by way of preferential allotment by the sponsor or its associate or group company;
    - any listed security of the sponsor or its associate or group company, in excess of twenty five per cent of the net assets of the scheme.
- A real estate mutual fund scheme shall not undertake lending or housing finance activities.
- The amended regulations have also specified accounting and valuation norms pertaining to Real Estate Mutual Fund schemes. The real estate asset shall be valued at cost price on the date of acquisition and at fair price on every ninetieth day from the day of its purchase.

HEAD OFFICE:

Mr. U.N. Marwah, Senior Partner
4/80, Janpath
New Delhi-1100 01
(India)
Tel: +91-11-2332 2685 2332 0601
Fax: +91-11-23322520
E-mail: rnm@rnm.in

BRANCH OFFICE:

Mr. Narendra Sanklecha
813 Oxford Towers,
139 Airport Road,
Bangalore-560 008
Tel.: +91-80-23612337, +91- 98440 62721
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
4, Shilpa Apartments,
43/15, Erandwane,
Pune- 411 004
Tel: +91 20-254 67340
Fax: +91 20- 254 39889
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

DISCLAIMER

R.N.Marwah & Company (hereafter referred as RNM) has taken due care and caution in compilation and presenting factually correct data contained herein above. While RNM has made every effort to ensure that the information /data being provided is accurate, RNM does not guarantee the accuracy, adequacy or completeness of any data/information in this newsletter and the same is meant for the use of the recipient and not for circulation. Readers are advised to satisfy themselves about the merits and details of each article and the information contained therein, before taking any decision. RNM does not hold themselves liable for any consequences, legal or otherwise arising out of the use of any such information/data and further states that it has no financial liability whatsoever to the recipient/readers of this newsletter. RNM nor any of its partners/employees/representatives do not accept any liability for any direct or consequential loss arising from the use of information /data contained in this newsletter or any information /data generated from this newsletter. Any dispute arising in future shall be, subject to the court(s) at Delhi.