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U.N. Marwah

Dear Readers,

We hope all the readers received the Budget Analysis and are happy with the headline grabbing story of the tax savings of upto Rs. 49,852 for men, Rs.49,286 for women and Rs.43,621 for senior citizens as compared to the previous year 2008-09.

The last fortnight of February 2008 was particularly choppy for the stock market where lows of 15,332 were reached. It is expected that the market would remain range bound and begin rising to reach new peaks around April-August 2009.

We wish all our readers a happy and joyous Holi festival and hope the festival brings new color to your life.

In the month of March the last installment of advance taxes are due and assessee's are making a beeline to their tax consultants to ensure proper tax planning in a year when tax collections are expected to be more robust than ever before.

U.N. Marwah
Senior Partner

On behalf of the Editorial Team

[Service Tax]

Further Service Tax Exemption to Exporters

It seems that the government is waking up to the demand of exporters in relation to Service Tax in installments. A fresh Notification, in a series of notifications exempting exporters from payment of service tax when exporting goods outside India, has been issued vide **Notification No.3/2008-Service Tax dated 19/02/2008**. The notification adds three more services in the list of services mentioned in **Notification No.41/2007-Service Tax dated 06/10/2007**. New services are, 1) Services provided by a courier agency to an exporter in relation to transportation of time-sensitive documents, goods or articles relating to export, to a destination outside India, 2) Services provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported, 3) Services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.

Notification No. 41/2007 ST dated 06/10/2007 provides for the exemption from service tax by means of a refund application which shall be claimed by the exporter of goods for the specified services received and used by the exporter for export of the said goods under some conditions. In the said Notification No. 41

seven services were specified. Later on two more services were added to this list by the Notification No. 42/2007 ST dated 29/11/2007.

[Customs]

New Rate of Exchange For Certain Foreign Currency

For the persons involved in the business of import or export of goods, the Central Board of Excise and Customs vide **Notification No. 10/2008-Customs (N.T.)** dated 26th February, 2008, has determined the rate of exchange of conversion of each of the foreign currency specified in column (2) of each of Schedule I and Schedule II annexed hereto into Indian currency or *vice versa*, **with effect from 1st March, 2008** in column (3) thereof, relating to imported and export goods.

SCHEDULE-I

| S.No. | Foreign Currency | Rate of exchange of one unit of foreign currency equivalent to Indian rupees | |
|-------|------------------|--|-----|
| (1) | (2) | (3) | |
| | | (a) | (b) |

| | | (For Imported Goods) | (For Export Goods) |
|-----|-------------------|----------------------|--------------------|
| 1. | Australian Dollar | 37.50 | 36.80 |
| 2. | Canadian Dollar | 40.40 | 39.70 |
| 3. | Danish Kroner | 8.00 | 7.85 |
| 4. | EURO | 59.70 | 58.75 |
| 5. | Hong Kong Dollar | 5.15 | 5.10 |
| 6. | Norwegian Kroner | 7.60 | 7.45 |
| 7. | Pound Sterling | 79.15 | 77.90 |
| 8. | Swedish Kroner | 6.45 | 6.30 |
| 9. | Swiss Franc | 36.95 | 36.35 |
| 10. | Singapore Dollar | 28.65 | 28.20 |
| 11. | US Dollar | 40.20 | 39.70 |

SCHEDULE-II

| S.No. | Foreign Currency | Rate of exchange of 100 units of foreign currency equivalent to Indian rupees | |
|-------|------------------|---|--------------------|
| (1) | (2) | (3) | |
| | | (a) | (b) |
| | | (For Imported Goods) | (For Export Goods) |
| 1. | Japanese Yen | 37.35 | 36.70 |

[Income Tax]

ESOPs From Foreign Companies Brought Under FBT Net

Equity shares of foreign companies allotted to employees in their Indian subsidiaries through Employee Stock Option Plans (ESOPs) have now been brought under the Fringe Benefit Tax (FBT) net under Rule 40D of the Income Tax Rules 1962. The meaning of equity shares has been widened to take the general meaning under the Income Tax Law and thereby include equity shares issued by foreign companies. The Central Board of Direct Taxes (CBDT) has also amended the income tax rules to specify the valuation mechanism for securities other than equity shares. It has been specified that the fair market value of such securities would have to

be determined by a merchant banker. These changes will take effect from April 1, 2008 and would apply in relation to assessment year 2008-09 and subsequent years.

Capital Gains Exemption u/s 54F

(2008) 297 ITR (AT) 110 (Bangalore) Nipun Mehrotra Vs Assistant Commissioner of Income Tax

The Bangalore Tribunal held that where an assessee has utilized the amount for acquiring a new asset, after the regular due date of filing of the return but before the date of filing of belated return (*i.e.*, within two years from the last day of the financial year), he will be entitled to claim exemption under section 54F from capital gains. In order to claim exemption under section 54F, the assessee invested capital gains on sale of shares in various months. The Assessing Officer disallowed the exemption on the ground that investment should have been made before the regular date of filing of return. However, the assessee had invested such gain before the date of filing belated return. The Tribunal observed that provisions of section 54F do not mention any sub-section of section 139 and it only provides for investment to be made before the due date of furnishing the return of income. Therefore, to claim exemption, the assessee need not utilize the amount of gain for acquisition of new asset before the regular due date of filing return.

Accordingly, the claim of the assessee was allowed.

Leave Travel Assistance- A Fundamental Understanding

Leave travel assistance (LTA) is generally paid as a part of the remuneration of employees. With some proper planning, an employee can save some tax through this mode. The LTA amount is received from the employer towards a journey within India subject to compliance with specified conditions.

Section 10 of the Income Tax Act specifies that in the case of an individual, the amount of any travel concession or assistance received by him is exempt. It should be received from his employer for himself and his family.

The exemption is available to an individual for two journeys in a block of four calendar years. Where such travel concession or assistance is not availed of by the individual during any such block of four calendar years, it may be carried forward. Such amount of travel concession or assistance can be availed of by the individual during the first calendar year of the immediately succeeding block of four calendar years.

Any fixed sum paid by the employer to the employee by way of LTA on the basis of a self-declaration by the employee is not exempt from tax. In order to claim the exemption, he must produce original proofs for expenses, *i.e.*, the

tickets, bills etc. The tax benefit is for actual fare only. Hotel, food, sight seeing, local conveyance etc are not allowed.

For the purposes of this exemption, 'family' means the spouse and children of the individual, and parents, brothers and sisters who are mainly dependent on the individual.

In case the journey is by air, an amount not exceeding the economy fare of the national carrier by the shortest route to the place of destination is taken. In case the place of origin of journey and destination are connected by rail, and the journey is by any other mode of transport other than by air, an amount not exceeding the air conditioned first class rail fare by the shortest route to the place of destination is taken.

Where the place of origin of journey and destination are not connected by rail, the amount eligible for exemption is - where a recognised public transport system exists, an amount not exceeding the first class or deluxe class fare, on such transport, by the shortest route to the destination, and where no recognised public transport system exists, an amount equivalent to the air conditioned first class rail fare, for the distance of the journey, by the shortest route.

The amount exempt will not exceed the amount of expenses actually incurred for the travel. The exemption is available for a maximum of two children of an individual. The journey should be in India only. The exemption is available for

the farthest place by shortest route when a circular journey is undertaken. The amount exempted under Section 10 will be the amount actually incurred on the travel.

Treatment of Dividend Income in certain cases

Dividends are generally paid by companies out of their post tax profits. Thus, the dividend-paying company first pays income tax on its profits and then pays dividend out of the balance profits.

Thus, the dividend received by a shareholder is out of the profits which have already suffered tax. Therefore, if the person receiving dividend is again liable to pay income tax, it virtually amounts to double taxation of the same income.

Therefore, in many countries either there is no tax on dividend income or such income is taxed at concessional rates. In India, section 10(34) of the Income-tax Act exempts any income in the hands of the recipient (including foreign company) by way of dividends on which Dividend Distribution Tax (DDT) has been paid under section 115-O. Section 115-O prescribes tax at 16.995 per cent of the amount of dividend declared, distributed or paid.

It may be clarified here that, in India, the dividends declared by a domestic company is treated as tax-free. But where the dividend is received from a company located outside India, such dividend is liable to be taxed in India

because the exemption from tax is not available in a case where the dividend paying company is situated outside India.

In such a case, the dividend income in India in case of resident will be taxed at normal rates of tax, and in case of non-residents or in case of a foreign company the rate of tax will be 20 per cent.

However, if the dividend paying company is resident of a country with which India has signed Agreement for Avoidance of Double Taxation (AADT), the taxability of dividend income will be determined by the provisions of the AADT.

It is an established legal position that a tax treaty over-rides the provisions of Income-tax Act wherever the treaty provisions are more beneficial to a tax payer. This issue came up for consideration in a recent case of **Torquise Investment & Finance Ltd** where the Supreme Court, held that if the dividend income is exempt from tax under any AADT, then no tax can be levied on such income by invoking the provisions of the Indian Income-tax Act.

[FEMA]

Master Circular on Remittance Facilities for NRIs / PIO / Foreign Nationals

As per the provisions of the **Master Circular No. 04 /2007- 08 dt. 21.02.2008** which replaces the earlier Master Circular dated 02.07.2007 on the subject of "**Remittance facilities for Non-Resident Indians/Persons of Indian Origin / Foreign Nationals**" the following chief changes have been introduced:-

- 1. Remittance of assets by NRI/ PIO-** In respect of remittance of sales proceeds of assets acquired by way of settlement there is no lock in period and certain documentary evidence is to be furnished in that respect along with a certificate of a Chartered Accountant. Settlement is also a mode of inheritance from the parent the only difference being that the property under the settlement passes to the beneficiary on the death of the owner/ parent without any legal procedures and probate procedure can be avoided. Since the provisions of settlement were being misused, the RBI has clarified that a settlement where life interest in the property is not retained would tantamount to a regular gift. The remittance of sale proceeds of such property where no life interest is retained would be covered under the extant

instructions on remittance of balance in NRO account dealing with gift.

2. Repatriation of sale proceeds of residential property purchased by NRIs/ PIO out of foreign exchange-

❖ Authorisation to Regional Rural Banks (RRBs): With a view to make foreign exchange services available to the NRIs/PIO on a wider scale, RRBs are now authorised to open and maintain FCNR (B) Deposit accounts also by NRIs/PIO.

❖ Repatriation of maturity proceeds of FCNR (B) deposits: AD Category-I banks and authorised banks are permitted to make remittance of the maturity proceeds of FCNR (B) deposits to the third parties outside India, provided the transaction is specifically authorised by the account holder and the AD is satisfied about the bonafides of the transaction.

❖ ESOP to NRI Employees: Authorised dealers are permitted to grant Rupee loans to NRIs employees of Indian companies for acquiring shares of the companies under the ESOP Scheme. The loan scheme should be as per the policy approved by the bank's Board and would further be

subject to the conditions indicated in AP (DIR Series) Circular No. 7 dated August 22, 2007.

Master Circular on Miscellaneous Remittances from India – Facilities for Residents

As per the provisions of the **Master Circular No. 05 /2007- 08 dt. 21.02.2008** which replaces the earlier Master Circular dated 02.07.2007 on the subject of "Miscellaneous Remittances from India - Facilities for Residents" the following chief changes have been introduced:-

1. **Liberalised Remittance Scheme of USD 200,000-** In respect of earlier liberalized remittance scheme of USD 100,000 which was enhanced to USD 200,000 vide AP (DIR Series) Circular No. 09 dated 26.09.2007 the RBI has introduced a new statement which is to be furnished before the RBI Central Office in Mumbai by the Authorised Dealers on the number of applicants and the total amount of remitted under the Scheme, on a quarterly basis in a prescribed format within 10 days of the expiry of the relevant quarter.
2. **International Debit Cards-** The International Banking Divisions/Foreign Exchange Departments of AD banks may submit a statement as on December 31, each year (as per proforma at **Annex-5**) in case

the aggregate forex utilization by the IDC holders exceeds USD 100,000 in a calendar year. The statement should reach the Chief General Manager, Foreign Exchange Department, External Payments Division, Central Office, Mumbai- 400 001 on or before 20th January of the succeeding year.

- c) Remittance of current income
- d) Restrictions
- e) Tax Compliance

Master Circular on Non-Resident Ordinary Rupee (NRO) Account

Master Circular No. 03 /2007- 08 dt. 21.02.2008 which replaces the earlier Master Circular dated 02.07.2007 on the subject of "**Non-Resident Ordinary Rupee (NRO) Account**" includes for the convenience of authorised dealers, a table of Statements / Returns to be submitted to RBI and Operational Guidelines given in Annex-1 & 2, respectively. The introduction of these Annexures are the chief changes which have been introduced:

1. **Annex-1:** A proforma of the statement to be submitted to the RBI by the authorized dealer on a quarterly basis has been given.

2. **Annex-2-** Operational Instructions to the Authorised Dealers include:
 - a) General
 - b) Opening of accounts by Bangladesh/ Pakistan entities



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