RNM ALERT

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U.N. Marwah

Dear Readers,

The end of the fiscal year 2008-09 has brought with it hopes and expectations of a better year ahead. The recent global upswing in the stock market has reinforced the positive sentiment and the hope that a recovery is around the corner.

The campaigning for the general elections in India has nearly come to an end with some States having already gone in for polling. We at RNM urge all citizens to take their democratic responsibility seriously and go out to vote in large numbers, ensuring a say in the future of our country. In the end, a difference can be made by each and every one of us to change the system and move forward.

The changes introduced in the Accounting Standard 11, 'The effects of Changes in Foreign Exchange rates' by way of the Companies (Accounting Standard) Amendment Rules, 2009 has provided corporates a means to shore up their sagging profits. As per the amendment, forex losses on capital assets can be capitalised and mark-to-market forex losses or gains can be accumulated in a special account. Due to the volatility in the forex markets, severe hit in bottomlines would otherwise have been faced by many companies dealing in long term foreign currency monetary items.

The Limited Liability Partnership (LLP) which has been notified along with its rules is now a reality. This is a positive step and would help the service sector to grow further. Some issues such as taxability of LLP's and conversion of existing firms and companies into LLP still remain to be addressed.

The Banking Cash Transaction Tax (BCTT) has also died a silent death with effect from April 1, 2009.

U.N. Marwah
Managing Partner
On behalf of the **RNM Alert** Editorial Team

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DIRECT TAX

➢ *Case Law*

Profits and Gain from Business & Profession

Business Income or House Property Income

Whether a receipt is a business receipt or a receipt from mere letting out of an immoveable property would depend on the facts of the cases; if the object is to use property for commercial activities, then income from same is considered as Business Income.**[Harvindar Pal Mehta HUF vs. Dy.CIT ITA NO.7159/MUM 05, Dated 22-05-2008(MUM-ITAT)]**

Business Income under Section 28-Charging Section

The increase in capital of partners as a result of revaluation of Assets of the firm has no nexus with the business of firm and therefore cannot be brought within the ambit of section 28(iv), (which states that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession). **[Sec.28 (IV) DCIT Vs Manish M. Chheda ITA no. 2703/MUM/07(MUM-ITAT)]**

Reimbursement of salary of expat crew members on deputation, held as salary & not FTS.

Assessee company incorporated in UK entered into an agreement with ONGC to conduct drilling operations for ONGC in offshore water of India with drilling ship. As assessee did not have its own crew, it entered into a contract with another group company for procuring drilling and marine crew where it agreed to reimburse all crew salaries and expenses with 5% handling fee. Reimbursement of salary of crew by the assessee company to Group Company cannot be treated as fees for technical services (FTS) which were separately quantified. Fact that the crew was employees of the assessee is supported from further facts that drilling ship was operated by assessee. It was

assessee who was responsible to ONGC as regards nature & quality of crew services to the entire exclusion of the Group Company, who deputed crew. Tax was therefore deductible at source under s.192 and not under s.195.Payments in question were therefore covered by s.40(a)(iii) and not by s.40(a)(i).In respect of crew members, who did not stay in India, exceeding in the aggregate a period of 90 days, salary paid was exempt under s.10(6)(viii) and assessee was not liable to deduct tax at source under s.192.No disallowance under s. 40(a)(i) was therefore, called for.[**Section 40(a)(i),40(a)(iii),192 & 195 Dolphin Drilling Ltd v. Asst CIT [2009] 121 TTJ 433 (Del))]**

Transfer to Special Reserve by Financial Corporation

Special reserves created by the financial corporation engaged in providing long term finance for construction or purchase of residential houses as specified u/s 36(1)(viii) of the Act. Assessee earned income by way of interest on inter corporate deposit & discounting charges. It was held that immediate source of income on which assessee claims deduction u/s 36(1)(viii) must be providing long term finance for construction or purchase of residential house in India. Discounting charges from the business of discounting the investment and interest on bank and inter corporate deposit are not eligible for deduction u/s 36(1)(viii),as the immediate source of such receipt not being providing long term finance for construction or purchase of residential house in India.[**Section 36(1)(viii) Gruh Finance Limited v Asst CIT [2009] 121 TTJ 527 (Ahd)]**

Payment of supply of technical personnel vis-à-vis absence of PE in India

If the foreign company does not have a Permanent Establishment (PE) in India & having no place of business in India, hence the payment made by another foreign company to that company for supply simpliciter of personnel for executing contract by the foreign company in India was not taxable in India. Hence provisions of section 195 and for matter that of section 40(a)(i) could not be invoked for disallowing deduction of such payment.**[Section40(a)(i) Deputy Director of IT vs. Stock Engineer & Contractor [2009] 121 TTJ 320(Mum)]**

Salaries and wages pending revision

Assessee Company made provision of certain amount under head 'salaries and wages are pending revision'. AO disallowed provision on ground that liability had not been ascertained and had not accrued. Tribunal found that as on 31-3-1998, Board of Directors had taken decision not to revise pay scales before1-7-1999,& it was only on 28-9-1998 that Board of directors has decided to revise pay scales with effect from 1-7-1997 & thus very decision to revise pay scales come to existence after 31-3-1998.& it was held that there was no liability to pay extra amount by way of revised pay as on 31-3-1998 and as such, provision made therefore could not be allowed in relevant assessment year.**[Sec. 37(1) CIT vs. Central Govt. Employees Consumer Co-operative Society Ltd.[2009] 178 Taxman 5 (Delhi)]**

Assessment Proceedings

Power of CIT under section 263

The revisional power of commissioner cannot be exercised in respect of a matter which falls in power to assess escaped income u/s 147.The commissioner may pass an order enhancing, modifying the assessment or canceling and directing a fresh assessment but a mistake or omission in the assessment order would not justify the setting aside of the whole order.**[Sec. 263 Rajesh Goyal & Sons vs. .CIT ITA NO. 204/AGR/2008(AGRA-ITAT)]**

Power of Tribunal /ITO

The income tax has not conferred jurisdiction on the tribunal to review and revise its order in the garb of rectification, as the tribunal is not a court and it has no power to review its own orders adjudicated on merits.**[Samson Maritime Ltd. vs. DCIT MA No. 687/MUM/2008 (MUM-ITAT)]**

Tax Arrears

Declaration made in terms of Kar Vivad Samadhan Scheme, 1998 was required to be considered with respect to tax arrears irrespective of whether the dispute was in question in appeal, where assessee had determined the tax arrears that would be deemed to be included in amount of tax determined as modified by any appellate order but remaining unpaid. It also includes such arrears which after determination had been set aside, but such setting aside had not been accepted by the department & therefore continued to remain under the challenge. **[Sec. 92 Bhawaralal (HUF) vs. ACIT [2009] 177 Taxman 541 KAR)]**

Income Escaping Assessment

In the current case it was held that the contention raised on behalf of the Revenue that Expln.2(c) of sec.147 is mandatorily required to be considered notwithstanding the proper disclosure made by the assessee at the time of the original assessment, when the period of four years from the end of relevant assessment year has expired as prescribed under proviso to sec.147 is sans merit-None of the points in respect of which AO issued notice under sec.148falling within the ambit of the expression “failure on the part of the assessee to disclose fully & truly all material facts necessary for his assessment”, reopening of assessment made under sec.143(3) after the expiry of four years from the end of relevant assessment year was not valid.**[Section 147 proviso,147 Expln.2 & 148 DCIT v. Tata Motors Ltd [2009] 121 TTJ 494 (Mum)]**

Power conferred under sec. 268A

Under the recently introduced Sec 268A,the CBDT has the power to issue orders, instructions or directions for the purpose of regulating filing of

appeal or application for reference to income tax authority under the provisions of the chapter-Appeals & Revisions. In the said case the appellate authority held that the instructions of CBDT cannot be interpreted as a statute though it is pursuant to the power conferred under sec. 268A; what the court has to consider is the plain language of the instructions and the object behind the same. **[Breaking News CIT vs. Polycott Corporation ITA No. 1241 of 2008[23.1.2009 (BOM.)]**

Computation of undisclosed income of the block period

Sec.158BB (4) read with explanation (a) mandates that only B/F losses of the past years under chapter VI and unabsorbed depreciation u/s 32(2) are to be excluded while aggregating the total income or loss of each previous year in the block period, and set off of inter se losses and depreciation against income assessed in other previous years in the block period is not prohibited.**[Sec.158BB (4) Settlement Commission (Income tax & wealth tax) & Anr vs. E.K.Lingamurthy & Sons. [2009] 19 DTR (sc)99]**

Penalty

Levy Penalty under section 271(1)(c)

Mere non- Acceptance of explanation offered by the assessee cannot form a basis for the satisfaction of ITO to the effect that the assessee has concealed particulars of his income; the ITO must have some definite evidence to refuse the assessee's claim or evidence or explanation.**[Sec.271(c) Glorious Realty Pvt. Ltd. Vs ITO ITA no. 93/MUM/08(MUM- ITAT)]**

Scope of Income

The test before income can be taxed is whether there is a real accrual of income.

Once the assessee adopted mercantile system of accounting, the amount would be taxable in assessment year for which it was payable. Whether on facts, there was no real accrual of income to the assessee and it was only on arbitral proceedings coming to an end and award being passed, that income received by assessee would be liable to be assessed.**[Sec. 5 FGP Ltd. Vs.CIT [2009]177 Taxman 147]**

Exemption

Exemption under section 10 or 11.

The investment in fixed assets like furniture and buildings might have been connected with imparting the education, but purchased and constructed out of income from surplus after meeting all its expenses incurred towards imparting education, with a view to expand its institution & to earn more income does not match with the scheme of exemption defined in u/s 10(23C)(iiiad).Therefore, it is

better to go for section 11 exemptions instead of section 10 on account of flexibility.**[Sec.10 (23C)(iiiad) CIT vs. Queens Educational Society [2009] 177 Taxman 326 Uttarakhand)]**

Proviso to s.54 denies exemption in those cases where the assessee owns more than one residential house on the date of transfer of assets

Word 'property ' has not been used in Section 54F and therefore two or more flat cannot be taken as one residential house/unit to allow exemption. An assessee who had more than one residential house i.e. two flat in a building on the date of transfer of original assets will not be entitled to exemption u/s 54F.& another assessee who had only one residential house on the said date will be entitled for the same exemption. **[Section 54F & 23(2) ITO v. Farouk D.Vevaina [2009] 121 TTJ 510 (Mum)]**

Deemed Dividend

Amount that is advance during the year is to be considered as deemed dividend u/s 2(22)(e) and not the balance o/s at the end of accounting period

For the next year deemed dividend would be equal to advance received in that year to the extent the company had accumulated profit after adjustment of deemed dividend for earlier year.**(Section 2(22)(e) Aswani Enterprise v. Asst CIT [2009] 121 TTJ 408 (Chennai))**

➢ Latest Notification/ News

CBDT brings out new TDS norms for greater transparency

In an effort to bring greater transparency and accountability in income tax deduction, the Central Board of Direct Taxes has notified new guidelines and the forms for tax deduction and tax collection at source.

Now, TDS certificates – Form 16 and From 16 A will have to be furnished to the deductee or the employee within one week or latest within one month from the end of the financial year in which

in which the payment is made by the employer. At present, it often takes about two to three months for the certificates to reach the deductee. The CBDT has also replaced Form 16, Form 16A and Form 16AA with Form 17, as a certificate of tax deduction and tax collection at source. But on Tuesday the CBDT clarified that "the new Form 17 is applicable only for payment of tax deducted or collected at source on or after April 1, 2009. Any TDS or TCS made before April 1, 2009, the payment will continue to be made to the credit of the Central Government by using the existing challan in Form No. 281 even is it is done after March 31, 2009." While the employee can get a duplicate Form 16 or 16 A from the employer in case it is lost, he will have to provide an indemnity bond or a certificate of payment from the tax department when the assessing officer gives credit for the TDS on the basis of the duplicate From 16 or 16A. As per the new norms, the tax deducted at source would also have to be deposited with the department within one week from the end of the month in which it is deducted or is due. "The person responsible for collecting the tax will have to deposit it with the Central government within one week from the end of the month when it is collected," the CBDT circular states. He will also have to electronically furnish an income tax challan in Form No 17. A detailed circular on the amended rules relating to TDS and TCS is also expected soon.

No Banking Cash Transaction Tax (BCTT) from Apr 1

The slowdown may be pinching everyone's pockets, but there's a marginal tax relief in sight. The withdrawal of the Banking Cash Transaction Tax (BCTT) from April 1, 2009 was announced by former finance minister P Chidambaram in Budget 2008-09.With the Finance Act, 2008 having provisions for withdrawing the tax, the Central Board of Direct Taxes now does not have to issue a fresh circular or notification to this end, a finance ministry official said. The objective behind introducing the tax was to keep track of large cash withdrawals, "which leave no trail, and presumably become part of the black economy." The BCTT is a 0.1% levy on 'taxable banking transaction.

INDIRECT TAX

➢ Central Excise & Service Tax

➢ Case Laws

Expenses forming part of the cost of final products is available for credit

In this case the Honorable Tribunal considered the issue relating to the availment of input Service Tax credit on the following services:- (1) Medical and personal accident policy (2) Group personal accident policy (3) Insurance (4) Personal accident policy (5) Personal vehicle services (6) Landscaping of factory garden (7) Catering bills. The findings of the Tribunal are that CAS-4 Standards wherein all the elements of costs which are required to be included in the costing of final product have been enumerated. It further held that the contribution to provident fund and ESIC, medical benefits, subsidized food and also other allowances such as children education allowance, conveyance allowance which are payable to employees in the normal course of business, etc., are considered for costing a final product in terms of the CAS-4. When that be the case, it is evident that all these services have been rendered/received in relation to the manufacture of the final products by the appellants. Hence, the input credit is definitely allowable.

With regard to the credit on Service Tax paid on landscaping, according to the definition of "Input Service" it includes among other things services used in relation to modernization of a factory, premises of provider of output service or an office relating to such factory or premises,. The Tribunal held that these days, much importance is given to keeping the environment of a factory in a proper manner thus, one can include even landscaping the surroundings of the factory as 'input service'.

Thus the Tribunal held that CAS-4 has considered all the services such as medical benefit, subsidized food, education allowance, canteen bill, etc., to form part of the cost of the final products. Therefore, these services which have been received have been rendered only in relation to the manufacture of the final products.**[M/s Millipore India ltd vs. The Commissioner of Central Excise, Bangalore-ii 2009-tiol-490-CESTAT-BANG)]**

Nature of service important for classification

In this case the Tribunal found that the finding of the lower authorities that appelant had rendered management consultancy during the material period and had incurred liability to pay service tax under that category is not substantiated because the order is on the basis that the 'Management Fee' accounted in the records of the assessee during the material period represented proceeds realized from its group concern towards management consultancy rendered. There is no finding as to the nature of the service rendered and if the same was taxable under 'Management Consultancy'. Further, the service rendered was classifiable under BAS (Business Auxiliary Service) and the same was introduced in the Act on a later period. The Tribunal was of the opinion that the lower authorities found that the assessee had rendered taxable service without any reliable evidence to substantiate the same. There is no finding as to the activity involved and if the same was classifiable under 'Management Consultant'. In the circumstances, the impugned demand of tax, interest and the penalties imposed on APPIPL are held to be not sustainable. **[M/s Aparna Paper Processing Industry (P) Ltd vs. The Commissioner Central Excise Service Tax,Pondicherry 2009-tiol-520-CESTAT-MAD)]**

➢ Latest Notification

Amendment in form ST-3

The Central Government has amended the Form ST-3 by inserting after S. No. 7 and the entries relating thereto, the following :-

"8. If the return has been prepared by a Service Tax Return Preparer (STRP), furnish further details as below:

(a) Identification No. of STRP

(b) Name of STRP

The date for filing for From ST-3 (Service Tax Return) for the period between October, 2008 and March, 2009 is between 1st April and 25th April, 2009.**[vide Notification No. 10 / 2009-ST, Dated:- 17th March, 2009]**

Levy of service tax on borrowers of ECB

Service tax authorities, of late, have been issuing notices to various borrowers of External Commercial Borrowings (ECB's) from foreign branches of Indian banks and holding them liable to pay Service tax from September 10, 2004 under section 65(12)(a)(ix) of the Finance Act, 1994 which covers ECBs. According to the borrower, the responsibility of paying service tax is of the service provider which is the foreign branch of the Indian bank and, hence, the Indian bank having a permanent establishment in India, is supposed to pay and not the borrower.

The contention of the service tax authorities is partially correct after coming into effect of section 66A of the Finance Act, 1994 from April 18, 2006. Until the coming into effect of section 66A, the liability and obligation to pay service tax was that of Indian bank and not that of the borrower. Contrary to the contention of the service tax authorities, even under rule 2(1)(d)(iv) of the said Rules, effective from August 16, 2002 and June 16, 2005 respectively, the borrower cannot be made liable for the payment of service tax.

Rule 2(1)(d)(iv) reads as follows :—

'Person liable for paying the service tax' means,—

(iv) in relation to any taxable service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India, and such service provider does not have any office in India, the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India."

From the aforesaid provisions, it would be clear that until April 18, 2006, the requirement under rule 2(1)(d)(iv) was that only in case where the service provider did not have any office in India, the person receiving taxable service was liable for paying service tax involved. In the cited case, the Indian Bank having its registered and head office in India and a branch in a foreign country cannot be said to be a service provider who did not have an office in India. After coming into effect of section 66A, rule 2(1)(d)(iv), substituted with effect from April 18, 2006 by the Service Tax (Second Amendment) Rules, 2006, reads as follows :—

"'Person liable for paying the service tax' means -

(iv) in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service;"

As such, until April 17, 2006, the borrower was not a 'person liable for paying service tax' within the meaning of the Act and the said Rules, including rule 2(1)(d)(iv) thereof.

It is relevant to note herein that the phrase 'does not have any office in India', in rule 2(1)(d)(iv), stands omitted from the substituted rule. As such, with effect from April 18, 2006, in any case where the taxable service is provided or is to be provided by either a person who has established a business in a country other than India or has a fixed establishment from which the service is provided or is to be provided in a country other than India or has his permanent place or usual place of residence in a country other than India, the service recipient in India would be treated as if it has itself provided the service in India and, accordingly, it would be liable to pay the service tax and comply

with all procedural and other requirements as specified in the Act and the said Rules. The respective clauses in section 66A (1) (a) are disjunctive and, hence, once any of the three alternatives contained therein are satisfied, the service recipient becomes liable to pay service tax on the taxable service involved. Applying the aforesaid provision, since the service is being provided by foreign branch of an Indian Bank, the condition precedent laid down in section 66A(1)(a) is satisfied and, in the absence of the phrase 'does not have any office in India' in rule 2(1)(d)(iv), as recipient of the services, the borrowers would be liable to make payment of the service tax payable on the 'Banking and Other Financial Services'. The fees paid or to be paid are liable to service tax under 'Banking and Other Financial Services' under the Act with effect from September 10, 2004.The liability to pay service tax for the period prior to April 18, 2006 would be that of Indian Bank and on and from April 18, 2006, would be that of the borrowers.

Paper, chemical, textile to see rate change

Sectors like paper, chemical and textile are likely to see changes in their tax rates when the next Budget is presented. After two rounds of cuts in excise duties, Revenue Secretary P V Bhide said the temporary changes had resulted in some distortions, adding that the same would be corrected in the next Budget.

COMPANY LAW

➢ Latest Notification

Modification in section 220, 303(2) and 594 of the Companies Act, 1956

As per notification now file single copy in place of three copies of balance sheet & profit & loss account with Registrar within 30 days of AGM as required under sec. 220 of the Companies Act, 1956.Similarly file single return (earlier duplicate) containing the particulars of directors, managing directors, managers or secretaries and change, if any, [Form-32] as required under sec. 303(2) of the Companies Act, 1956.

In case of foreign company file single copy (earlier three copies) of balance sheet & profit & loss account along with list in prescribe form of all places of business established by the company with Registrar, in every calendar year. **[Issued vide Notification no G.S.R. 70 (e) dated 03.02.2009)]**

Amendment to Accounting Standard 11

Introduction

The Central Government vide Notification dated 31 March, 2009, has amended Accounting Standard (AS) 11 and notified under the Companies (Accounting Standard) Rules, 2006.

Main changes

AS 11, prior to this amendment, required all foreign currency monetary items to be reported using the closing exchange rate. As of now:-

1. If the long-term foreign currency monetary item relates to other than an acquisition of a depreciable capital asset, exchange differences should be accumulated in the "Foreign Currency Monetary Item Translation Difference Account" and amortized over the life of the monetary item but not beyond 31 March, 2011.
2. If the long-term foreign currency monetary item relates to acquisition of a depreciable capital asset, exchange differences arising on such monetary items should be added to or deducted from the cost of the asset.

It may also be noted that unlike pre-revised Schedule VI, the amendment does not make any distinction in respect of fixed assets acquired from outside India or otherwise. Hence, the optional

treatment in the notification would have to be applied in respect of all depreciable assets, whether acquired from within or outside India.

Other Points:

1. It is an optional notification for the company (only applicable on the entities registered under companies act)

2. The option may be exercised in the first financial statement released after the date of notification, but once the decision is taken it is irrevocable & disqualifies company from using option in future.

3. This notification is applicable only on "Long Term Foreign Currency Monetary Item"

"Foreign Currency Monetary Items" has been defined in the AS-11 as "money held and assets and liabilities to be received or paid in fixed or determinable amounts of money"

4. After opting for this notification ,the exchange rate difference wouldn't be capitalized but transfered to "Foreign Currency Monetary Item Translation Difference Account".

5. Its a retrospective amendment from the accounting period commencing on or after 7th December, 2006 i.e. previously recognized differences of foreign exchanges that have already been charged to profit or loss, now would be transferred to "Foreign Currency Monetary Item Translation Difference Account" .Deficiency or excessive amount should be routed thru General Reserve(in case not sufficient for the adjustment ,then use Profit & Loss account's surplus).

6. Amortization period is from the first financial statement after the date of notification to 31st March,2011.So while deciding upon the optional notification ,taken into account the time span. Either beneficial to write off differences immediately or amortized up till 31st March,2011.

7. Notification is applicable only to the extent of AS-11.

8. Applicability of AS-22 is also attracted, due to adoptability of this optional notification.

9.AS-28 would also comes into picture because of meltdown in economy.

10 Foreign Currency Monetary Item Translation Difference Account", should be shown under "Reserves & Surplus head" and capitalized the exchange difference in the fixed asset schedule.

11.Additional disclosure in the notes of accounts:

(a) Fact that company has chosen the option

(b)Amount remaining to amortised.

In the schedule VI previous year figures should be stated without any change. The effect should be shown thru General Reserve (in case not sufficient for the adjustment ,then use Profit & Loss account)

Amendment in Schedule VI of the Companies act, 1956

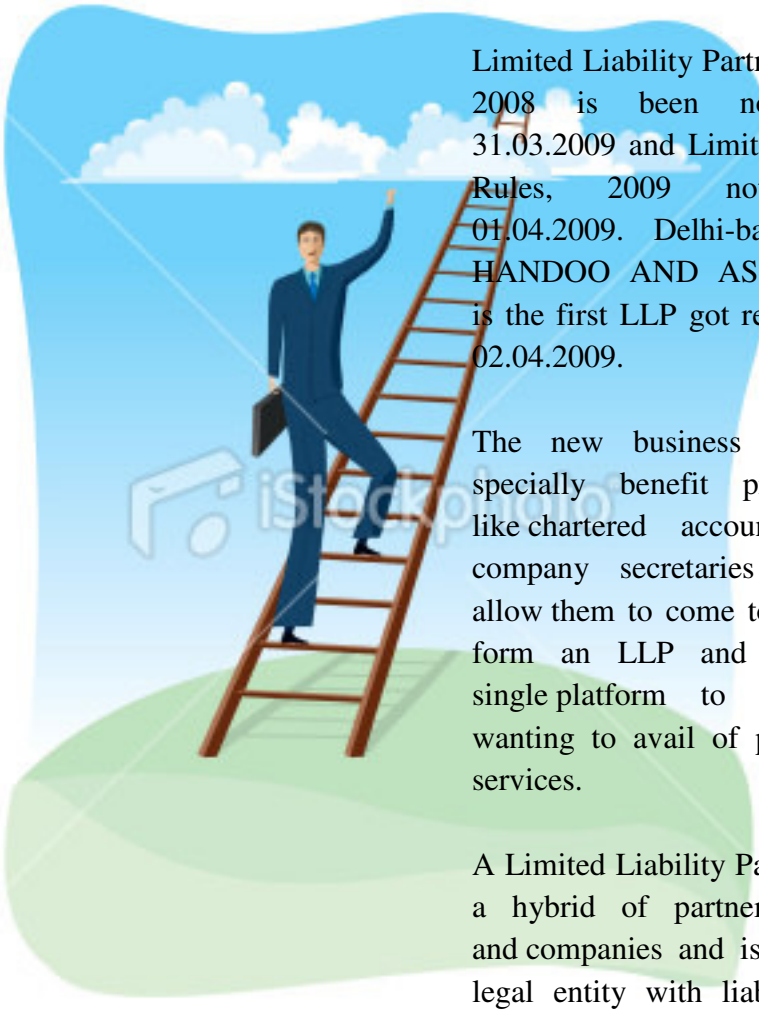
In the said schedule, in part I relating to 'Form of Balance sheet", under heading "A, Horizontal Form" in column (6),

the second paragraph, Explanation 1 and Explanation 2 shall be omitted. Second paragraph is related to computation of original cost of fixed assets acquired from a country outside India consequence of a change in the rate of exchange at any time after the acquisition of such asset, which leads to increase or reduction of liability as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the assets.

The amount, by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be, deducted from the cost, and the amount arrived at after such addition or deduction shall be taken to be the cost of the fixed asset.

The above said omissions of the second paragraph, Explanation 1 and Explanation 2 are in consequence of recent amendment made in Accounting Standard-11 (AS-11).

[Issued vide Notification no G.S.R. 226 (e) dated 31.03.2009)]



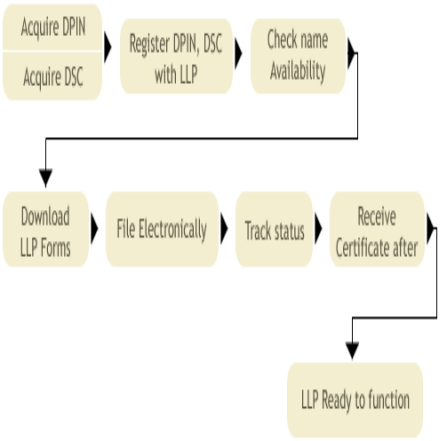
Limited Liability Partnership (LLP) begin its journey from 01.04.2009

Limited Liability Partnership Act, 2008 is been notified on 31.03.2009 and Limited Liability Rules, 2009 notified on 01.04.2009. Delhi-based R K HANDOO AND ASSOCIATES is the first LLP got registered on 02.04.2009.

The new business form will specially benefit professionals like chartered accountants and company secretaries and will allow them to come together and form an LLP and provide a single platform to all people wanting to avail of professional services.

A Limited Liability Partnership is a hybrid of partnership firms and companies and is a separate legal entity with liability being limited to the extent of stake held by a partner.

The following **Process** is needed to start LLP in India



The **salient features** of the LLP Act 2008 inter alia are as follows: -

The LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession;

The mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act 2008. The act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed the LLP Act;

The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP;

Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;

The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;

The Central Government have powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;

The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act 2008;

A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the

LLP Act. On and from the date of registration specified in the certificate of registration, all tangible (moveable or immoveable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;

The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;

The LLP Act 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such

Changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;

The Indian Partnership Act, 1932 shall not be applicable to LLPs.

Companies (Central Government's) General Rules and forms (Amendment) Rules, 2009 (Revision of form 1AA, 1AD, 23C and 24)

Form 1AA (Particulars of persons or director(s) charged or specified for the purpose of clause (f) or (g) of section 5) effective from 29.03.2009.

Form 1AD (Application for confirmation by regional Director for change of registered office of the Company within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar) effective from 29.03.2009.

Form 23C (Form for application to the Central Government for appointment of cost auditor) effective from 29.03.2009.

Form 24 (Form of application to the Central Government for increase in the number of directors of the company)

FOREIGN EXCHANGE MANAGEMENT ACT

➢ Latest Notification/ News

Monitoring Framework for non-deposit taking NBFCs

RBI in an earlier circular vide DNBS (PD) CC. No.130/03.05.002 / 2008-2009 dated September 24, 2008 had given relaxation to all NBFCs with asset size of Rs 50 crore and above but less than Rs 100 crore to submit an online quarterly return on important financial parameters. The said online submission procedure was to be intimated in due course.However,now the RBI has instructed that non-deposit taking NBFCs with asset size of Rs 50 crore & above but less than Rs 100 crores, shall for the present submit, hard copy and soft copy (via e-mail in Excel format) to the Regional Office of the Department of Non-Banking Supervision in whose jurisdiction their company is registered, within a period of one month from the close of the quarter. .**[(Issued by RBI, vide DNBS (PD) CC. No.137/03.05.002 / 2008-2009 dated March 2, 2009)]**

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

It had been decided by RBI A.P. (DIR Services) circular no. 39 dated December 08, 2008 to liberalize the procedure and consider applications for buyback of FCCBs as per procedure hereunder:

A. Automatic Route:

The designated AD Category - I banks may allow Indian companies to prematurely buyback FCCBs, subject to compliance with the terms and conditions set out hereunder:

i) the buyback value of the FCCB shall be at a minimum discount of 15 per cent on the book value;

ii) the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in EEFC account) or abroad and / or out of fresh ECB raised in conformity with the current ECB norms; and

iii) Where the fresh ECB is co-terminus with the outstanding maturity of the original FCCB and is for less than three years, the all-in-cost ceiling should not exceed 6 months Libor plus 200 bps, as applicable to short term borrowings. In other cases, the all-in-cost for the relevant maturity of the ECB, as laid down in A. P. (DIR Series)

No.26 dated October 22, 2008 shall apply.

B. Approval Route:

The Reserve Bank will consider proposals from Indian companies for buyback of FCCBs under the approval route, subject to compliance with the following conditions:

i) the buyback value of the FCCB shall be at a minimum discount of 25 per cent on the book value;

ii) the funds used for the buyback shall be out of internal accruals, to be evidenced by Statutory Auditor and designated AD Category – I bank's certificate; and

iii) the total amount of buyback shall not exceed USD 50 million of the redemption value, per company.

Applications complying with the above conditions may be submitted, together with the supporting documents, through the designated AD Category - I bank, to the Reserve Bank of India, for necessary approval.

It has now been decided by the RBI to extend the date for completing the entire procedure for buyback of FCCBs from March 31, 2009 to December 31, 2009. Accordingly, the entire procedure of buyback should be completed by December 31, 2009.**[Issued by RBI 2008-09/411 A.P. (DIR Services) circular no.58 dated March 13,2009]**

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

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

AFFILIATE OFFICES:

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

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

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

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

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

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