

# RNM ALERT

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U.N. Marwah

Dear Readers,

We are pleased to inform you that in addition to our new initiative of Corporate Finance, which we reported in our last RNM Alert Vol. XIX, we have also now expanded our service offerings to include Management Advisory Services and Information System Services through our new Joint Venture, *RNM Astral Consultancy*.

RNM now provides Process Design Evaluation, Risk Based Internal Audits, Forensic Audit, BI Consulting, Information Security Audit, ISMS among other consulting and assurance services through the said Joint Venture.

The Supreme Court has paved the way for the setting up of the National Company Law Tribunal (NCLT), an issue which has been pending since the year 2002 when enabling changes were made in the Companies Act, 1956. This is a welcome step for India Inc. and will enable speedy resolution of corporate matters.

The valuation method applicable for transfer of shares under the extant RBI regulations has been amended, scrapping the archaic CCI guidelines and replacing it with the more contemporary DCF method.

Wishing all the readers the best for the forthcoming summer holiday season.

Regards,

**U.N. Marwah**

For and behalf of the RNM Alert Editorial Board

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## DIRECT TAX

### ➤ Case Laws

#### Penalty

Section 271(1)(c) – Penalty for concealment of Income – A.Y. 2001-02 – Assessee claimed interest on loan for purchasing shares which was disallowed by the A. O. Penalty imposed for furnishing inaccurate particulars of income. Held merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271(1)(c).  
[CIT vs. Reliance Petroproducts (P) Ltd. [2010] 189 TAXMAN 322 (SC)]

#### Penalty

Provisions of Sec 271(1)(c) are applicable to assessment under sec 153A; immunity under sec. 271(1) (c), Explan. 5 is however not available as the returns were filed after the search and the additional income disclosed in those returns do not fall under the category of the return mentioned in Explan. 5(2) to sec. 271(1) (c); benefit of Explan. 5 is confined to the return for the year in respect of which the previous year is yet to end or

even though ended, the time for filing the return under sec. 139(1) is yet to expire.  
[A CIT vs. KIRIT DAHYABHAI PATEL(2009)125TTJ(Ahd) (TM) 145]

#### Tax Deduction at Source

S. 195 (1) TDS obligation does not arise if the payment is not chargeable to tax. Samsung Electronics not followed.  
[ITO vs. Prasad Production 3 ITR (TRIB) 58 (Chennai)-Spl. Bench]

#### [Sec 195]

If the parties feel that either deduction of tax at source by payer is required to be at a rate lower than prescribed rate or no deduction is required to be made, they are required to file an application before A.O., otherwise it may be treated as in default and would suffer consequences provided under Act.

[Van Oord ACZ India (P.) Ltd. vs. C.I.T. [2010] 189 TAXMAN 232 (Del.)]

#### [Sec 194J]

S. 194J applies to payments made to non-professionals such as hospitals. CBDT Circular on TPA liability is valid except for view on penalty.

[Dedicated Health Care Services TPA vs. ACIT (Bombay High Court)]

#### [Sec 194J]

TPAs are required to deduct tax u/s 194J on payment to hospitals.  
[Medi Assist TPA vs. DCIT (Karnataka High Court)]

#### Tax Assessment

Accounting method for Developer  
[S. 145]

Assessee developer having regularly employed project completion method which is an accepted method of accounting, and the central government having not notified AS-7 under section 145(2), AO could not reject the accounts under section 145(3) on the ground that the assessee had not followed the percentage completion method.  
[Prestige Estate Projects (P) Ltd. v. DCIT (2010) 33 DTR 514 (Bang.) (Trib.)]

#### [Sec 149]

Notice should be issued within prescribed period –not necessary that notice should be served within prescribed period.  
[Mayawati Vs CIT(2010)321ITR 349(Del)]

#### [Sec 147]

Reassessment-Income escaping assessment-Income from

profession –sum received by assessee on retirement from firm of solicitors upon superannuation –Provision in deed of partnership prohibiting retiring partners from soliciting firm’s clients for 3 years-not applicable to assessee –receipt was not for renunciation of right to carry on profession – Receipt in money not a “Benefit arising from Profession”-No income escaping assessment.

**[BalkrishnaHiralalWani Vs ITO(2010)321ITR519(Bom)]**

#### **[Sec 80IA]**

The assessee imported Master Media of software from Oracle Corporation which was duplicated on blank discs, packed and sold in the market. The question arose whether the activity of copying the discs amounted to manufacture or processing of goods for purposes of s. 80IA. HELD, deciding in favour of the assessee:

In interpreting the expression “manufacture or processing of goods”, one has to move with the times and bear in mind that technological advancement in computer science makes knowledge as of today obsolete tomorrow.

The term “manufacture” implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation.

However, this test of manufacture needs to be seen in the context of the process adopted by the assessee for duplication of software. If an operation/ process renders a commodity or article fit for use for which it is otherwise not fit, the operation/ process falls within the meaning of the word “manufacture”.

The argument of the revenue that since the software on the Master Media and the software on the pre-recorded media is the same, there is no manufacture because the end product is not different from the original product is oversimplified and does not take into account the ground realities of business in modern times

**[CIT V/s. Oracle Software India Ltd. 320 ITR 546 (SC)]**

#### **Search & Seizure**

##### **Retraction of Statement**

##### **[Sec 132 (4)]**

Under section 132(4) unless authorized officer puts a specific question with regard to manner in which income has been derived, it is not expected from said person to make a statement in this regard and in such case if in statement under section 132(4) manner in which income has been derived has not been stated but has been stated subsequently, that amounts to compliance with explanation 5(2); therefore, mere

non-statement of manner in which such income was derived would not make explanation 5(2), inapplicable.

**[CIT vsRadhaKishanGoel (2005) 278ITR 454(ALL)]**

##### **[Sec 68]**

Assessee claiming expenditure in respect of chit amount paid to directors –Assessee, a Pvt company managed by recipient of amount-Amount available with assessee itself and payments representing expenditure never incurred –Finding that amount available with assessee as undisclosed income.

**[Such Chain Chits Pvt Ltd Vs CIT (2010)321ITR 471(P& H)]**

#### **Profits & Gain from Business & Profession**

##### **Advertisement, sales promotion, brand building**

##### **[S. 37]**

By incurring expenditure on advertisement and sales promotion, assessee had not acquired any fixed capital asset, but these expenditure were incurred for earning better profits and for facilitating assessee’s operation of providing cellular mobile services hence allowable as business expenditure.

**[ITO v. Spice Communications Ltd.(2010) 35 SOT 78 (Delhi)]**

**[Sec 37]**

Business Expenditure-Service charges paid to mutual fund for undertaking to subscribe to fully convertible debentures of sister concern-Allowable.

[CIT Vs RBG Investment And Finance Ltd (2010) 321 ITR 488 (Del)]

**Retrenchment compensation, Provident fundon closure of business**

**[Sec. 37(1)]**

Where one of the four units of the assessee was closed down. As per tribunal findings the units was continuing to carry on business. Expenditure incurred on payment of retrenchment compensation, interest on monies borrowed for making such payment and for payment of provident fund was allowable.

[CIT v. D. C. M. Ltd. (2010) 320 ITR 307 (Delhi)]

**Employees Contribution – PF**

**[Sec. 43B]**

Sec . 2 (24) (x) provides that amounts received by an assessee from employees towards PF contributions etc shall be “income”. S. 36 (1) (va) provides that if such sums are contributed

to the employees account in the relevant fund on or before the *due date* specified in the PF etc legislation, the assessee shall be entitled to a deduction. After the omission of the second Proviso w.e.f 1.4.2004, the deduction is allowable under the first Proviso if the payment is made on or before the *due date for furnishing the return of income*. The High Court had to consider whether the benefit of s. 43B can be extended to *employees’ contribution* as well which are paid after the due date under the PF law but before the due date for filing the return. HELD deciding in favour of the assessee  
[CIT v. Aimil Limited (Delhi High Court)]

**[Sec. 36(1)(vii)]**

**Bad Debt, write off of individual debtor’s a/c is not necessary**

The assessee made a provision for bad debts by debiting the P & L A/c and crediting the Provision for Bad debts A/c. Thereafter, the provision account was debited and the loans and advances a/c was credited. The AO denied the claim for bad debts u/s 36(1)(vii) on the ground that *the individual account of the debtor had not*

*been written off*. On appeal by the assessee, HELD reversing the High Court:

(i) Pursuant to the Explanation inserted w.r.e.f. 1.4.1989 **a mere provision for bad debt is not entitled to deduction u/s 36(1)(vii)**. However, in the present case, besides debiting the P&L A/c and creating a provision for bad debts, **the assessee had also obliterated the said provision by reducing the corresponding amount from the debtors account** in the Balance Sheet. Consequently, the figure in the loans and advances in the Balance Sheet was shown net of the provision for bad debts;

(ii) The AO’s insistence that the individual account of the debtor should be written off was not acceptable  
[Vijaya Bank vs. CIT (Supreme Court)]

**[Sec. 36(1)(iii)]**

**Sec. 36(1)(iii):** Interest paid on borrowed funds by way of issue of Secured Premium Notes (SPN) is allowable as revenue expenditure.

**Sec. 14A:**Proviso to section 14A was inserted by Finance Act 2002 w.e.f. 11.05.2001, does not confer any jurisdiction on AO to make re-assessment for any AY beginning on or before 01.04.01.

[JCIT Vs Bombay Dyeing Mfg. Co. Ltd. [2010] 123 ITD 1 (MUM)]

## Balancing charge – Depreciation

[Sec. 32(I), 41 (2)]

Sec 41(2) read with sec 32, of the income tax Act 1961-Balancing charge-assessee company started a windmill project and claimed depreciation on the same at 100%/u/s 32(1)(i)-Assessee's claim was allowed-Subsequent windmills were destroyed in a cyclone against which assessee received certain amount from insurance company –Revenue authorities brought said amount to tax us 41(2) were not applicable to sec 32(1)(i) and therefore amount received by assessee from insurance company couldn't be brought to tax –held yes.

[Rajhans Metals (P) Ltd v. ITO (2010) 122 ITD 189 (Mum)]

## Capital gains

### Trade mark

[Sec. 2 (42A), 47 (iv), 48 & 49 (I) (iii)(e)]

Transfer of trade marks being transfer of capital asset, gains arising therefrom are chargeable to capital gains tax. Cost of acquisition being indeterminable

long-term capital gains is not liable to any tax. matter remanded to decide the period of holding and to tax gains if held to be short term gains.

[Trent Brands Ltd v. ITO (2010) 127 TTJ (Del) (UO) 65]

## International Taxation

[Sec. 9]

Whether underwriting commission doesn't fall within definition of "fees for technical services".

Reimbursement of expenses doesn't have income element and hence can't assume character of income deemed to accrue or arise in India-held yes.

[Mahindra & Mahindra Ltd Vs DCIT (2010) 122 ITD 216]

## Wealth Tax

### Asset – Urban Land

[Sec. 2(ea) (v) & 2 (ea), Explan. 1 (b)]

Land belonging to the assessee on which he has unauthorisedly constructed a farm house stands excluded from the definition of 'urban land' as per Explan. 1 (b) to s. 2 (ea) as no construction was permissible on said land and therefore, it cannot be treated as an asset under the WT Act.

[CWT v. Lt. Gen. (Retd.) R. K. Mehra (2010) 228 CTR 205 (P&H)]

## [Sec 2(ea)]

Sec 2(ea) of the Wealth Tax Act, 1957 – Assets – A.Y. 2003-04 – Value of house under Construction including investment on construction is not liable to Wealth Tax.

[C.I.T. vs. Smt. Neena Jain [2010] 189 TAXMAN 308 (PUNJ. & HAR.)]

## ➤ Latest Notification/ News

### *Determination of Fair Market Value u/s 56*

The fair market value of a property, other than immovable property, shall be determined in the following manner, namely,-

### **Valuation of Jewellery/Valuation of archeological collections, drawings, paintings, sculptures or any work of art.-**

- (i) the fair market value of jewellery shall be estimated to be the price which such jewellery or archeological collections, drawings, paintings, sculptures or any work of art would fetch if sold in the **open market on the valuation date**;
- (ii) in case the jewellery or archeological collections, drawings, paintings, sculptures or any work of art is received by the way of purchase on the valuation date, from a **registered dealer**, the

invoice value of the **jewellery or archeological collections, drawings, paintings, sculptures or any work of art shall be the fair market value**;

- (iii) In case the jewellery is received by any other mode and the value of the jewellery or archeological collections, drawings, paintings, sculptures or any work of art exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the **open market on the valuation date**;

### **Valuation of shares and securities.-**

- (a) the fair market value of quoted shares and securities shall be determined in the following manner, namely;-

#### Quoted Shares and Securities

- (i) are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

- (ii) are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-

- (a) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
- (b) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

#### Unquoted Shares

- (b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner namely;-  
The fair market value of unquoted equity shares =

**(A-L)** \* **(PV)**  
**(PE)**

Where,

**A**= Book value of the assets in Balance Sheet as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

**L**=Book value of liabilities shown in the Balance Sheet but not including the following amounts:-

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- (iii) reserves, by whatever name called, other than those set apart towards depreciation;
- (iv) credit balance of the profit and loss account;
- (v) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the

extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

- (vi) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vii) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

**PE** = Total amount of paid up equity share capital as shown in Balance Sheet.

**PV** = the paid up value of such equity shares.

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation'.

[Notification number 23/2010 dated 8.04.2010]

### **CBDT notifies New Income Tax Return Form for AY 2010-11**

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes issue notifies New Income Tax Return Form for the Assessment Year 2010-11

(a) in the case of a person being an individual where the total income includes income chargeable to income tax, under the head,-

(i) "Salaries" or income in the nature of family pension as defined in the Explanation to clause (iia) of section 57;

or

(ii) "Income from house property", where assessee does not own more than one house property and does not have any brought forward loss under the head;

or

(iii) "Income from other sources", except winnings from lottery or income from race horses, be in Form SARAL-II (ITR-I) and be verified in the specified manner.

## INDIRECT TAX

### Customs, Central Excise & Service Tax

#### ➤ Case Laws

#### *Carbon Copy not Allowed for Cenvat Credit*

Held that in order to claim Modvat Credit original copy of invoices is required as there is no provision for granting of Modvat credit on the basis of carbon copy of challan. The Hon'ble High Court further held that laying down a blanket principle permitting Modvat credit on carbon copy may result in setting up to false claims and the possibility of availing credit by many persons against transaction may also arise, which will be highly damaging to the Revenue.

Hon'ble Supreme Court dismissed the Petition for the Special Leave to Appeal.

[S.K. Foils Ltd. v. Commissioner reported in 2009 (239) ELT 395 (P&H)]

#### *Penalty where Cenvat Credit Reversed for Non- return of Goods from Job Worker*

Held, that interest under Section 11AB of Central Excise Act, 1944 could not be levied in absence of fraud, suppression or willful misstatement.

Tribunal observed that the ingredients of Rule 13 of Cenvat Credit Rules, 2004 are not attracted as there is no wrong availing of Cenvat Credit in a case where the assessee had reversed the Cenvat credit on capital goods sent to job worker but not returned within a period of 180 days, before the issuance of show cause notice.

Hon'ble Supreme Court dismissed the Petition for Special Leave to Appeal.

[Commissioner v. Just Textiles Limited reported in 2009 (247) ELT 48 (Bom.)]

#### *Refund of Erroneous Payment of Duty when Exemption Available*

Held that when CVD had been paid by mistake of law or oversight, when exemption was available but omitted to claim, it cannot result in being assessed to duty which was otherwise not payable.

Further held that it was fit case to exercise extraordinary jurisdiction as it was not a case of violation of principles of natural justice or fairplay or violation of any fundamental rights and the mere existence of alternative remedy does not act as bar for Court in exercising extraordinary jurisdiction which depend on circumstances of the case.

The Hon'ble High Court also held that once there is power to assess, there is corresponding duty to assess according to law.

[Hero Cycle Ltd. v. Union of India, 2009 (240) ELT 490 (Bom.)]

### *Construction of 'Compound Wall' is Input Service*

The respondents are engaged in manufacturing of cotton fabrics and were availing facility of *CENVAT credit* of duty paid on 'input service' as well as capital goods and input service credit. The respondent availed credit of Service Tax on the basis of construction of 'compound wall'.

The department opined that construction of compound wall was not falling under the definition of 'input service' as the respondents have not used the service for providing any output service as well as the said service is not used by the

respondents directly or indirectly in or in relation to the manufacture of final products and for the clearances of final products.

Held that the compound wall was constructed to protect the goods lying within the factory, necessary to run the factory and is an integral part of the factory. Hence, the credit taken over the input service by the respondent on the construction of the compound wall is eligible to the respondent. **(Cenvat Credit-Input Service)**

[Commissioner Of Central Excise, Pune-Ii Vs M/S Raymond ZambaitiPvt Ltd, 2010-TIOL-604-CESTAT-MUM]

### *Processing of goods for or on behalf of client is taxable only with effect from 16.06.2005*

Activities, namely, machining, drilling, turning, surfacing on iron castings held as amounting

to 'processing' which was included in the definition of 'Business Auxiliary Service' on 16.06.2005.

For the period subsequent to 16.06.2005, the assessee paid service tax together with interest. As regards penalty under Section 76 and 78 the Tribunal accepted the contention of the assessee that since the levy was a new one and they were not aware of the coverage of processing of goods under 'Business Auxiliary Service'; they were under a reasonable belief that they were not liable to service tax and, therefore, set aside the penalty by extending protection under Section 80 of the Finance Act, 1994. **(Business Auxiliary service-Penalty)**

[M/s GedeeWeilerPvt Ltd Vs Commissioner Of Central Excise (ST)Coimbatore, 2010-TIOL-603-CESTAT-MAD]

***Delay in Payment of Service Tax over Confusion is not Malafide Intention Booking Procuring Order for Commission is not C&F Agent Service***

Service tax was introduced for the first time in July, 2003 by the Boards Circular dated 6-11-2006, wherein it has been clarified that the Service tax was leviable on a marketing agent of I.C.I.C.I. Bank for providing service to authorize customers for purchasing vehicles on loan. Assessee has partly paid the amount along with the interest. There was no *mala fide* on the part of the appellant and further the balance amount has been paid partly before the show cause notice and partly before the adjudication order. The Hon'ble High Court was of the view that Tribunal has rightly held that this is a fit case to invoke Section 80 of the Act and denied the penalty. **(Penalty)**

[Commissioner Of Central Excise Vs Auto World 2010-TIOL-233-HC-ALL-ST]

The stand of the assessee is that they were only procuring orders for customers and goods were being supplied directly to customers and they were paid brokerage which does not fall within the purview of services by a C&F Agent. Tribunal held in favour of the assessee. **(Clearing and Forwarding Agent Service)**

[Sri Kumaraguru Mill Vs Commissioner Of Central Excise Coimbatore, 2010-TIOL-589-CESTAT-MAD]

***No Provisions to Reverse Credit of Service Tax Availed***

The lower adjudicating authority confirmed the demand to reverse Cenvat credit of service tax availed in relation to the inputs or capital goods when removed as such from the factory but the

lower appellate authority dropped the demand.

Rule 3(5) of Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit on inputs and capital goods only if they are removed from the factory, there is no such provisions to reverse credit of service tax availed in relation to such inputs or capital goods removed from the factory.

It was held by the Tribunal that there is no such provision in the rules to reverse Cenvat credit of service tax availed in relation to the inputs or capital goods when removed as such from the factory. **(Cenvat credit of service tax)**

[Commissioner Of Central Excise, Nagpur Vs M/S Sanvijay Rolling & Engg Ltd, M/S Pix Transmission Ltd, 2010-TIOL-587-CESTAT-MUM]

### *Collection of Service Tax on Renting of Immovable Property Stayed*

On May 18, 2010 the Hon'ble Delhi High Court has granted stay on service tax on renting of immovable property after amendment by Finance Act, 2010 by observing that *Prima facie*, it appears that renting of immovable property itself has been regarded as a service by virtue of the recent amendment even though this Court by virtue of the said decision on 18.04.2009 had categorically concluded that renting of immovable property by itself cannot be regarded as a service and ordered that in the meanwhile, there shall be no recovery of service tax from the petitioner in respect of renting of immovable property alone. Next date of the hearing has been fixed on 21.09.2010.

[Home Solutions Retails Ltd Vs UOI And ORS2010-TIOL-341-HC-DEL-ST]

### ➤ **Latest Notification / News**

#### *Exemption to Coaching Institute from Service Tax*

The Central Government, exempted commercial training and coaching services when provided in relation to Modular Employable Skill courses approved by the National Council of Vocational Training, by a Vocational Training Provider registered under the Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

[Notification No. 23/2010 - Service Tax Dated 29/04.2010]

#### *Service tax on re-insurance commission*

Insurance as well as reinsurance are subject to service tax. Insurance company pays premium to the reinsuring company. However, a part of such premium is deducted and kept by the insurance company for meeting the administrative expenditure. And this expenditure is jointly born by the insurance company and the re-insurance company for running the insurance/reinsurance business. Service Tax is being demanded on this amounts which is deducted by the insurance company (in other words paid by the reinsurance company) on the ground that it is the consideration for the insurance company providing business auxiliary service (BAS) to the re-insuring company alleging that the insurance companies are promoting the

business of re-insurers thereby providing them the BAS.

The Joint Secretary (TRU-II) has clarified in this Circular that the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the insurance company is for its business promotion or a service on behalf of the re-insuring company (i.e. Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the

question of charging service tax under any other taxable service does not arise.

**[Circular No. 120(a)/2/2010-ST Dated 16.04.2010]**

### *Service tax on Container Detention Charges – regarding*

Generally marine containers are temporarily brought into a customs territory and have to be re-exported within a specified period. Normally, a Full Container Load is taken out of the port and the activity of stuffing or de-stuffing takes place at the premises of the exporter/importer. The shipping companies / steamer agent provide a pre-determined period within which the container (that has gone out of the port) is to be returned. This is called as ‘pre-holding period’ and the duration of the same is mentioned in the contract. In case there is any delay on the

part of the customer in returning the container, the charges known as ‘detention charges’ are collected over and above the contracted amount by the shipping line.

The Joint Secretary (TRU-II) has clarified in this Circular that to retain the container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor is it an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as ‘penal rent’ for retaining the containers beyond the pre-determined period. Therefore, the amount collected as ‘detention charges’ is not chargeable to service tax.

**[Circular No. 121/3/2010-ST Dated 26.04.2010]**

## COMPANYLAW & SEBI

### ➤ Latest Updates

#### *SC paves way for setting up NCLT to deal with company matters*

The Supreme Court on 10<sup>th</sup> May, 2010 paved the way for the establishment of the National Company Law Tribunal (NCLT) to deal with matters related to companies. Ruling on a petition filed by the Government against an order of the Madras High Court, a five-judge Constitution Bench headed by Chief Justice K G Balakrishnan today upheld the validity of the 2002 amendment with certain conditions.

#### *Revision of Form-32*

As per the Companies (Central government's) General Rules and Forms, (Amendment), 2010 Form-32 has been substituted w.e.f. 14<sup>th</sup> day of March, 2010 [Notification No. - G.S.R. 68(E) Dated 10th February, 2010]

#### *Introduction of Form-68*

A new form 68 has been introduced for rectification of mistake made while filing of Form-1A, Form-1 and Form-44, which can be filed within a period of sixty days from the

date of approval with ROC along with fee Rs. 1,000 (in case of Form-1A & Form-1)/ Rs.10,000 (in case of Form-44). [Notification No. - G.S.R. 177(E) Dated 05<sup>th</sup> March, 2010]

#### *Amendments to Equity Listing Agreement - Discontinuation of Electronic Data Information Filing and Retrieval System (EDIFAR)*

SEBI has since discontinued the EDIFAR system w.e.f from April 1, 2010. In view of this, Stock Exchanges are advised to carry out the consequential amendments in Equity Listing Agreement i.e. removal of words, "and also through the EDIFAR website" from Clause 32 and omission of Clause 51 from Equity Listing Agreement. The Stock Exchanges are also advised to inform about discontinuation of EDIFAR to all the listed companies.

[Circular No. CIR/CFD/DCR/3/2010 Dated 16th April, 2010]

#### *Reduction in time between issue closure and listing*

SEBI has decided to reduce the time between issue closure and listing to 12 working days.

This revised procedure shall be applicable to all public issues opening on or after May 3, 2010.

[Circular No. CIR/CFD/DIL/3/2010 Dated 22nd April, 2010]

#### *Making Annual Reports of Listed Companies easily accessible*

SEBI has advised all stock exchanges to carry out amendments to equity Listing Agreement viz omission of clause 51 of the Listing Agreement.

However with discontinuation of EDIFAR site it has become necessary to ensure that Annual Reports of listed companies are available/easily accessible to investors on alternative sites. Accordingly all Stock Exchanges are advised to make the Annual Reports for the financial year 2009-10 onwards, submitted to Stock Exchange as per clause 31 of Equity Listing Agreement, available on their respective websites.

[Circular No. Cir/ CFD /DCR/5 /2010 Dated 7th May, 2010]

# FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS



## RBI UPDATES

### Current Account Transactions – Liberalization

Prior approval of the Ministry of Commerce and Industry, Government of India, is required for drawing foreign exchange for remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million. The Government of India has reviewed the extant policy with

regard to liberalization of foreign technology agreement and it was decided to omit number 8 of Schedule II to the Foreign Exchange Management (Current Account Transaction) Rules, 2000.

Hence, AD Category-I banks may permit drawl of foreign exchange by persons for payment of royalty and lump-sum payment under technical collaboration agreements without the approval of Ministry of Commerce and Industry, Government of India.

[Notification No.G.S.R.382 (E)  
Dated May 5, 2010]

## ➤ LATEST NOTIFICATION / NEWS

### Foreign Direct Investment (FDI) in India - Transfer of Shares / Preference Shares / Convertible Debentures by way of

### Sale - Revised pricing guidelines

**Transfer by Resident to Non-resident** (i.e. to foreign national, NRI, FII and incorporated non-resident entity other than erstwhile OCB)

- a) **where shares of an Indian company are listed** on a recognized stock exchange in India, the price of shares transferred by way of sale shall not be less than the price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable, provided that the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares.
- b) **where the shares of an Indian company are not listed** on a recognized stock exchange in India, the transfer of shares shall be at a price not less than the fair value to be determined by a

SEBI registered Category – I - Merchant Banker or a Chartered Accountant as per the discounted free cash flow method. The price per share arrived at should be certified by a SEBI registered Category-I-Merchant Banker / Chartered Accountant.

**Transfer by Non-resident** (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI and FII) to **Resident**

Price of shares transferred by way of sale, by non-resident to resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.

[RBI/2009-10/445 A. P. (DIR Series) Circular No.49 dated 04.05.2010]

### External Commercial Borrowings (ECB) Policy

it has been decided to permit the IFCs Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) to avail of ECBs, External Commercial Borrowings including the outstanding ECBs, up to 50 per

cent of their owned funds under the **automatic route**, subject to their compliance with the prudential guidelines already in place. ECBs by IFCs above 50 per cent of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the **approval route**. Designated Authorized Dealer banks should ensure compliance with the extant norms while certifying the ECB application both under the automatic and approval routes.

All the other aspects of ECB policy such as USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognised lender, end-use, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged.

[RBI/2009-10/456 A. P. (DIR Series) Circular No. 51 dated May 11, 2010]

## CORPORATE FINANCE

### ➤ Latest News

#### Venture Capital Industry

##### **Tuscan Ventures to Set –up Rs. 150 cr. Cold Storage Logistics Firm across India**

Tuscan, which handles a \$50-million fund, has previously invested in LCL Logistix Pvt Ltd and Singapore-based RSI and is also eyeing real estate and education sectors.

[Source: May 17, 2010 | HinduBusiness Line]

##### **Foundation Capital Leads Rs. 40 cr Round In Education Firm Tree House**

Tree House Education and Accessories Pvt. Ltd, a Mumbai-based education company in pre-school to K-12 segment, has raised Rs 40 crore in series B round of funding.

[Source:- May 17, 2010 | Financial Express]

##### **Mayfield to Sell Servomax Stake back to Promoters**

Mayfield will sell its stake in Hyderabad-based firm Servomax India Ltd, the power conditioning equipment manufacturer, back to the promoters. In 2008, Mayfield had invested \$3.75 million in Servomax but quantum is not disclosed.

[Source:- May 14, 2010 | Mint]

##### **Indiaco Ventures To Make Partial Exit from Telecom Portfolio**

Indiaco Ventures Ltd (IVL), a listed investment firm, is set to offload partial stake in one of its investee companies in telecom space. IndiaCo Telecom has invested in Verity Technologies Pvt Ltd, which provides value added services in telecom sector, and in Info Dynamic Telesystems Pvt Ltd, a company in telecom infrastructure space.

[Source:- May 14, 2010 | Mint]

#### Merger & Acquisitions Industry

##### **Godrej Consumer Buys Latin America's Issue Group**

Godrej Consumer Products Ltd (GCPL) has further expanded its presence in the emerging markets with acquisition of South America based Issue Group. Issue Group is a leader in Argentina's hair colour market with an over 20% market share. London-based investment bank Elara Capital advised GCPL on the deal.

[Source:- May 23, 2010 | Mint]

##### **Abbott To Acquire Piramal Healthcare Unit for \$3.72 B**

Abbott Labs has inked a deal with Piramal Healthcare to acquire Piramal's Healthcare Solutions business (Domestic Formulations), for an up-front payment of \$2.12 billion, plus \$400 million annually for the next four years.

[Source:- May 24, 2010 | **Economic Times**]

### **KBC Sells KBL To Hinduja For \$1.7B**

Belgian banking and insurance group KBC said on Friday it had sold its private banking arm KBL European Private Bankers to Indian family-owned investment firm Hinduja Group for 1.35 billion euros (\$1.68 billion).

[Source:- May 22, 2010 | **Mint**]

### **Jindal Steel & Power Buying Oman's Shaded For \$464M**

Shaded is owned by Abu Dhabi's Al Ghaith Holdings PJSC, and is installing 1.5 MTPA gas based Hot Briquetted Iron (HBI) plant at Sohar Industrial Port area of Oman.

[Source:- May 20, 2010 | **Mint**]

### **Aegis Buys US Firm Sallie Mae's Customer Service Centre**

Aegis Ltd, the business process outsourcing arm of Essar

Group, is acquiring a customer service center of US-based Sallie Mae, an education finance service provider listed on the New York Stock Exchange.

[Source:- May 19, 2010 | **Economic Times**]

### **IDFC Buys 26% Stake In Orbis Capital**

(IDFC), a leading financial services company focused on infrastructure space, is acquiring 26% stake in Orbis Capital Ltd, a Gurgaon-based custodian firm. Mumbai-based advisory firm Orion Equity Advisors Pvt Ltd has advised Orbis on this transaction.

[Source:- May 18, 2010 | **Economic Times**]

### **ICICI Bank & Bank of Rajasthan Sign Merger Agreement**

Private sector lenders Bank of Rajasthan Founders have agreed to merge with ICICI Bank, India's second largest private sector lender. Bank of

Rajasthan has a market value of \$296 million.

[Source:- May 18, 2010 | **Economic Times**]

### **Private Equity Industry Indiareit Fund Eyes Up To Five Exits This Year**

Buoyed by the recovery in the real estate sector, Indiareit Fund Advisors, promoted by the Piramal Group, is eyeing four to five partial exits this year from its large portfolio of residential projects.

[Source: -May 20 2010| **Economic Times**]

### **Brahma Management Wins Gurgaon Land Auction For Rs. 620 cr.**

New York-headquartered investment firm Brahma Management has outbid Bharti Group and Unitech to clinch a 13-acre land parcel in Gurgaon for Rs 620.

[Source: -May 03 2010| **Economic Times**]

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