Dear readers,

We are pleased to present the March 2014 edition, EY’s quarterly newsletter “Tax Digest,” summarizing significant tax and regulatory developments.

This newsletter is designed as a ready reckoner and covers landmark tax judgments, an update on tax treaties and alerts on topical developments in the tax arena. It provides access to “In the press” covering the published articles on various issues in the tax realm over the last quarter. It also covers the key thought leadership reports and other topics that of an interest to a tax professional.

We hope you find this edition, both timely and insightful.

Best regards,
EY Tax Update team

Contents

Direct tax
Verdicts
Treaty connections
Tax happenings across the border
From the Tax Gatherer’s desk

Indirect tax
Service tax
CENVAT credit
Excise duty
Customs duty
VAT
Foreign Trade Policy
Key statutory developments

Regulatory
Foreign Direct Investment
Reserve Bank of India
Securities and Exchange Board of India

In the press
Compilation of alerts

Direct Tax
Indirect Tax
Regulatory

What’s new

For the significant updates on the new Companies Act 2013: India Inc - Companies Act 2013 - An overview

For the latest tax updates from across the APAC region, read our monthly newsletter: APAC Tax Matters

For the latest tax insights for business leaders, read our quarterly magazine: T Magazine

Useful links

Tax & Regulatory Services
Tax Library
Doing Business in India 2012-13
India Tax Webcast series
www.ey.com
Decisions supported by our Litigation team

Maintainability of AAR application filed after the date of filing ROI

The controversy on the maintainability of application before the Authority for Advance Rulings (AAR) when a return of income (ROI) is filed prior to such application has been a contentious issue. The AAR, in its rulings, has held that an application would not be maintainable once the ROI is filed. This view was accepted by the Delhi High Court (HC) in the case of Net App BV and Sin Oceanic Shipping ASA [TS-619-HC-2012(DEL)]. In the recent past, however, the AAR has been taking a view that mere filing of ROI should not create an embargo on maintainability of application; but, once a notice is issued, there would be a bar on maintainability.

Meanwhile, the controversy traversed to the Supreme Court (SC) in the case of Sin Oceanic Shipping ASA, Norway [TS-42-SC-2014], which was argued by our Litigation Team. The SC set aside the decision of the Delhi HC as well as the adverse ruling of the AAR on the impugned controversy and restored the matter to the AAR for re-adjudication. While the SC did not evaluate independently the issue of admission of AAR application, setting aside the decision of Delhi HC and the adverse rulings of the AAR has nullified the adverse HC decision/AAR rulings.

In another case of Mitsubishi Corporation (applicant), In re, [AAR No.1309 of 2012], argued by our Litigation Team, the AAR observed that when a ROI is filed, it is processed by the Tax Authority, requiring the Tax Authority to compute total income or loss after adjusting arithmetical errors or incorrect claims apparent from the return. Except where an assessment notice under Section 142(1) or 143(2) of the Income Tax Act (ITA) has been served to the taxpayer, the Tax Authority has no jurisdiction to examine or adjudicate upon debatable issues. Accordingly, mere filing of return does not create a bar on the admission of the AAR application.

Income from sale of shares accepted as an investment activity

In the case of DCIT v. E-cap partners (Taxpayer) [ITA No. 4785/Mum/2009], argued by our Litigation Team, the Taxpayer was engaged in the activity of trading in shares as well as investment in shares and mutual funds, in addition to its normal business. The Mumbai Tribunal held that the Taxpayer had been consistently investing in shares and income arising therefrom had been consistently shown as capital gains, which has been accepted by the Tax Authority year-on-year. Moreover, maintenance of two separate portfolios for trading and investment was in line with the Circular no. 4/2007 (Circular) issued by the Central Board of Direct Taxes (CBDT). Merely because the Taxpayer liquidated its investment within a short span of time to yield better returns could not lead to a conclusion that the Taxpayer was involved in trading. Therefore, the Tribunal held that mutual funds activity falls within investment activity.

In another case of Bharat Ghia (Taxpayer) v. DCIT [ITA No.6319/M/2010], argued by our Litigation Team, the Mumbai Tribunal observed that the Taxpayer valued the shares at cost in the Balance Sheet. Therefore, the intention of the Taxpayer was clear that it was an investment activity. Maintaining two separate portfolios, one for trading and the other for investment, is in line with the Circular. Therefore, the Tribunal held that the gain was assessable as capital gains.

Administrative support services not taxable as FTS

In the case of Endemol India Pvt. Ltd. (Applicant) v. CIT [AAR Nos. 1075, 1076, 1083 of 2011], argued by our Litigation Team, the Applicant was an Indian company engaged in the business of producing and distributing television programs. The issue was on taxability of payments made to foreign companies by the Applicant for various services as mentioned below:

<table>
<thead>
<tr>
<th>Nature of service</th>
<th>Particulars</th>
<th>Applicable DTAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative support services</td>
<td>Corporate and general support procured by the applicant from its overseas parent based in the Netherlands</td>
<td>India-Netherlands Double Taxation Avoidance Agreement (DTAA)</td>
</tr>
<tr>
<td>Services of executive producers outside India</td>
<td>Singapore company had to provide an executive producer to supervise the shooting of television programs outside India</td>
<td>India-Singapore DTAA</td>
</tr>
</tbody>
</table>
On the above services, the AAR ruled that no technical knowledge, expertise, skill/know-how or process was made available to the Applicant by enabling it to apply any technology independently, and, hence, failed the “make available” test enumerated in the Fees for Technical Services (FTS) definition under the respective DTAAs.

The Applicant had also made payments to an Argentina company for providing line production services, which were in the nature of arranging for crew and support personnel etc. The AAR held that the payments made toward these services fell under “work contract” as defined in Explanation to Section 194C of the ITA and, hence, cannot be treated as FTS under the ITA. Once considered as “work,” it would be business income and in the absence of permanent establishment (PE) of the Argentine company in India, held that the income was not taxable in India. Consequently, withholding tax obligation did not arise on the Applicant.

Some key issues on which SLPs were dismissed by the SC

<table>
<thead>
<tr>
<th>Citation</th>
<th>Particulars</th>
<th>Ruling of HC</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT v. Birlasoft Ltd [TS-82-SC-2014]</td>
<td>Tax Authority preferred a Special Leave Petition (SLP) against Delhi HC's decision that allowed depreciation claim of 60% on computer peripherals</td>
<td>The Delhi HC had held that depreciation on computer accessories and peripherals would be admissible at the rate of 60%</td>
</tr>
<tr>
<td>Indian Sugar &amp; General Industry Export Import Corp. Ltd. [TS-2-SC-2014]</td>
<td>Tax Authority preferred an SLP against Delhi HC's decision to tax export loss reimbursement on receipt basis.</td>
<td>The Delhi HC upheld Tribunal's order that export loss reimbursements received by taxpayer (sugar exporter) were to be taxed on receipt basis and not on accrual basis.</td>
</tr>
<tr>
<td>Agrawal Round Rolling Mills Ltd. [TS-51-SC-2014]</td>
<td>Tax Authority preferred an SLP against Chhattisgarh HC's decision deleting imposition of concealment penalty.</td>
<td>Chhattisgarh HC held that there was no &quot;concealment&quot; for imposition of penalty, as there was neither detection nor possession of information by the Tax Authority, besides taxpayer's surrender.</td>
</tr>
<tr>
<td>Sanghvi Swiss Refills Pvt. Ltd. [TS-53-SC-2014]</td>
<td>Taxpayer preferred an SLP against Bombay HC's decision upholding concealment penalty impose.</td>
<td>The Bombay HC had upheld penalty imposition on the basis that inaccurate particulars were furnished by the taxpayer leading to concealment of income.</td>
</tr>
<tr>
<td>Gujarat Narmada Valley Fertilizers Co Ltd. [TS-54-SC-2014]</td>
<td>Tax Authority preferred an SLP against the Gujarat HC's decision deleting disallowance on reimbursement payments to agents.</td>
<td>The Gujarat HC upheld Tribunal's order deleting disallowance under Section 40(a)(ia) on transportation and other expenses reimbursed by the Taxpayer to Clearing &amp; Forwarding/consignment agents as: Such expenses were incurred by agents on taxpayer's behalf and were separately mentioned in their bills Withholding obligation on payment of transport charges and other charges were complied with by agents</td>
</tr>
</tbody>
</table>

Other significant developments

Significant SC decisions

SC upholds prosecution for failure to file ROI

In the case of Sasi Enterprises (Taxpayer) v. ACIT [TS-43-SC-2014], the SC held that prosecution can be initiated against taxpayers who fail to furnish ROI within the prescribed due date or in response to a notice. The SC also reiterated that the initial burden lies on the Taxpayer to prove the circumstances, which prevented the Taxpayer from furnishing ROI. Furthermore, the fact that Taxpayer's assessment is not final due to pendency of appeal proceedings would not act as a bar against initiation of prosecution proceedings.

(For more details, please refer EY Tax Alert dated 3 February 2014)
Citation | Particulars | Ruling of HC
--- | --- | ---
CIT v. Sun Developers [TS-96-SC-2014] | Tax Authority preferred an SLP against Gujarat HC's decision upholding deduction under Section 80-IB for the business undertaking, developing and building housing projects. | Gujarat HC held that deduction under Section 80-IB in respect of business of building housing projects could be allowed even though the Taxpayer was not the legal owner of the land and development rights were in the name of the original land owner.
ACIT v. Stock Exchange [TS-84-SC-2014] | Tax Authority preferred an SLP against Gujarat HC's decision allowing “charitable object” exemption to a recognized stock exchange (RSE). | The Gujarat HC noted that the RSE was constituted for the purpose of developing the stock market and was clearly covered as a charitable object for the purpose of exemption under Section 11 of the ITA. The HC held that once a certificate of exemption was granted to the taxpayer, the Tax Authority could not ignore such certificate and the question of eligibility of exemption during assessment.
CIT v. Lanco Kondapalli Power (P) Ltd. [TS-37-SC-2014] | Tax Authority preferred an SLP against Andhra Pradesh (AP) HC’s decision that disputed amounts under litigation do not constitute “income”. | The AP HC held that, if an amount is disputed and pending for adjudication in arbitration, there was no crystallization and quantification of amount due. Unless the debtor accepts the amount to be due, it cannot accrue to the taxpayer even under the mercantile system of accounting.

AAR and HC on constituting a PE in India

The AAR, in the case of Booz & Company (Australia) Pvt. Ltd. (applicant) [TS-76-AAR-2014], ruled on whether provision of technical and professional employees to the Indian affiliate company (ICo) results in a PE of the relevant group entities in India. The AAR, with regard to the interdependency among the group entities and the nature of services rendered, held that a PE exists for the group entities in India.

(For more details, please refer EY Alert dated 21 February 2014)

The Delhi HC, in the case of DIT v. E Funds Corporation and its group entities (Taxpayer) [TS- 63-HC-2014 (Del)], decided on whether outsourcing of services to an Indian affiliate results in a PE in India for the Foreign Enterprise (FE) under the provisions of the India-US DTAA. The HC held that a subsidiary constitutes an independent legal entity for taxation purpose and, hence, the holding-subsidiary relationship or control exercised by a parent on its subsidiary, by itself, does not result in a PE of the FE in India unless the contrary is proved. On facts, the outsourcing of activities to the Indian affiliate was found not to result in either a fixed place PE or agency PE of the FE in India. Deputation of employees of the FE to carry out stewardship activities to protect the interests of the FE does not result in a service PE of the FE in India. Similarly, employees of the subsidiary who work under the supervision and direction of the Indian affiliate also do not result in a service PE of the FE in India. As no PE of the FE was found to exist, no profits could be taxed in India.

(For more details, please refer EY Alert dated 10 February 2014)

Decisions on various aspects of “interest”

Interest on income tax refund

The Uttarakhand HC, in the case of DIT v. Pride Foramer SAS (Taxpayer) [TS-623-HC-2013(UTT)], ruled on the issue of whether the interest received on income tax refund by a PE of the Taxpayer is covered under Article 12 (interest) of the India-France DTAA. The HC held that Article 12 applies when the recipient of interest does not have a PE in India. In the instant case, the Taxpayer had a PE in India and, accordingly, was paying taxes under the presumptive taxation provisions of the ITA on its income. Therefore, in the presence of a PE, the interest earned in India on refund of income tax was held not covered by Article 12 of the India-France DTAA. Therefore, the HC implied that Article 7 (business profits) would be applicable. One may note that the HC has not discussed whether the interest income was effectively connected to PE or not.

Timing of taxing interest on income tax refund

The Andhra Pradesh HC, in the case of M. Jaffer Saheb (Taxpayer) v. CIT [TS-678-HC-2013-API], held that interest on income tax refund is taxable in the respective years to which it belonged and not when the appellate authority passed an order granting the same. The HC observed that a statutory right was conferred on the Taxpayer to get refund of the excess tax paid and such refund should be made to the Taxpayer even without his having to make any claim thereto. Determination/quantification of the interest amount cannot postpone the accrual. If a right has legally
accrued to the taxpayer, the right should be deemed to have accrued in the relevant year even though the dispute as to the right is settled in the later year.

Discounting charges is not interest

In the case of ITO v. MKJ Enterprises Ltd. (Taxpayer), the issue before the Tribunal was whether discounting charges paid on discounting of bills of exchange can be characterized as “interest” and, hence, liable for tax withholding under the ITA and consequent disallowance of expense for not deducting tax deducted at source (TDS) by the Taxpayer. The Tribunal held that interest under the ITA relates to a pre-existing debt, which implies a debtor-creditor relationship. The discounting charges under consideration are not in the nature of “interest” since they are not payable in respect of the money borrowed or debt incurred by the Taxpayer. Accordingly, such expenses do not attract withholding obligation and are to be allowed in computing the business income of the Taxpayer.

[For more details, please refer to the EY Tax Alert dated 30 January 2014]

Nature of interest earned on Government grant kept in FDs

In the case of Karnataka State Agricultural Produce Processing & Export Corporation Ltd. (Taxpayer) v. ACIT [TS-677-ITAT-2013-Bang], the Taxpayer received a grant from the State Government to improve and create infrastructure facilities in various parts of the state for export of horticultural produce. The grant was kept in Fixed Deposits (FDs) till utilization for the desired projects. Interest on such FDs was capitalized and added to the grants received from the Government. The Tribunal held that the Government had specifically directed that interest earned on deposits of grant-in-aid pending utilization should be treated as additional grant of the scheme and not treated as income of the Taxpayer. The Tribunal also placed reliance on Institute of Chartered Accountants of India (ICAI) Expert Advisory Committee’s opinion, which stated that the interest on grant should be capitalized and not treated as income.

Deductibility of employees’ contributions deposited after the statutory due dates

Under Section 43B of ITA, any sum payable by the taxpayer as an employer by way of Provident Fund (PF) or any other fund for the welfare of employees is deductible only on actual payment, on or before the due date of filing of RoI. Under Section 36 of the ITA, certain payments are deductible from business profits only if they are paid on or before the due date of the legislation or regulation governing the payment (e.g. due date under PF Act, ESI regulations etc.). Controversy exists whether employees’ contribution to PF, paid before the due date under Section 43B but beyond the due date under Section 36 can be allowed as a deduction.

The Gujarat HC, in the case of CIT v. Gujarat State Road Transport Corporation (Taxpayer) [TS-681-HC-2013(GUJ)], held that if the Taxpayer has not credited the employees’ contribution received by it to the employees’ account in the relevant fund on or before the due date under Section 36, the Taxpayer will not be entitled to claim deduction of such amount.

The Rajasthan HC, in the case of CIT v. Jaipur Vidyut Vitran Nigam Ltd. [TS-16-HC-2014-Raj], took a contrary view stating that where the taxpayer had deposited the amount of employee’s contribution to PF/ESI before the due date of filing RoI, then such amount should not be disallowed.

Following suit, the Karnataka HC in the case of Spectrum Consultants India Pvt. Ltd. [TS-684-HC-2013(KAR)] and in Essae Teraoka Pvt. Ltd. [TS-71-HC-2014(KAR)] upheld the deduction of employees’ contribution to PF/ESI when deposited on or before the due date of filing the RoI. The HC explained that the Parliament, while allowing an extended time limit under Section 43B, has not made any distinction between employee’s and employer’s contribution. The HC relied on Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 and concluded that the word “contribution” used in Section 43B of the ITA means the contribution of both the employer and the employee.
Expenditure on software

Expenditure on acquiring master copies of software used for duplication and licensing is revenue in nature

The Delhi HC, in the case of Oracle India Pvt. Ltd. (Taxpayer) v. CIT [TS-598-HC-2013(DEL)], ruled on the issue of characterization of expenditure as capital or revenue, which was incurred for import of master copies of software used for duplication and sub-licensing to customers in India. In this case, the Taxpayer was required to frequently (i.e., ranging from a day to two months) import master copies with every update as the life cycle of each individual version of the master copy was limited and uncertain. The HC held that, in the facts of the case, expenditure on acquiring the master copies for updating software used for duplication and licensing is revenue in nature for the reason that such master copies are subject to high obsolescence, constant improvement and upgrading and, hence, have no enduring benefit.

[For more details, please refer to EY Tax Alert dated 10 December 2013]

Expenditure on software development qualifies as scientific research

The Karnataka HC, in the case of CIT v. Talisma Corporation Pvt. Ltd. (Taxpayer) [TS-654-HC-2013(Kar)] ruled on whether software development expenditure qualifies as “scientific research” and, therefore, eligible for 100% deduction as capital expenditure under Section 35(1)(iv) (Section) of the ITA. The Taxpayer was engaged in the business of software development and software product sales and services, which, inter alia, included customer relationship management (CRM) software. It acquired Intellectual Property rights in a software product from another entity and incurred expenditure on further developing and improving the software, which was capitalized in the books of account. The HC held that the development expenditure incurred by the Taxpayer qualified as “scientific research” and was eligible for 100% deduction under the Section.

[For more details, please refer to EY Tax Alert dated 3 January 2014]

Significant HC decision on withholding tax

Prosecution for failure to remit taxes withheld, with the GoI

In Kingfisher Airlines Ltd. and Vijay Mallya (Taxpayers) v. ACIT [TS-30-HC-2014(KAR)], the Taxpayers had deducted taxes from various payments but failed to remit the same to the Government of India (GoI). The Karnataka HC upheld the prosecution proceedings initiated against the Taxpayers and held that neither the pendency of recovery proceedings for TDS default, nor quantification of amount of default is necessary for initiating criminal proceedings. The HC also disregarded Vijay Mallya’s argument that he was not the “principal officer” responsible for day-to-day withholding compliance, since there was no bar from treating more than one officer-in-default for prosecution proceedings.

Tribunals on allowability of depreciation claim

Depreciation allowable even if business activity is temporarily suspended

In the case of Shineup Fibre Ltd. (Taxpayer) v. DCIT [TS-106-ITAT-2014-Kol], the Taxpayer was engaged in the business of manufacturing of cotton yarn and temporarily suspended its business activities due to labor problems for a period of three years. The Tax Authority sought to disallow depreciation on plant and machinery due to suspension of work. The Kolkata Tribunal held that in business, temporary stoppage of manufacturing process could not disentitle the Taxpayer to claim depreciation on assets, which have been put to use and owned by the Taxpayer, until the business itself is discontinued.

Depreciation on fixed assets available without reducing Government subsidy

In the case of ACIT v. Harinagar Sugar Mills Ltd. (Taxpayer) [TS-49-ITAT-2014(Mum)], the Taxpayer received subsidy from the State Government under a formulated scheme. The Tax Authority reduced the amount of subsidy from the written down value (WDV) of assets and disallowed depreciation on that amount. The Mumbai Tribunal held that the Tax Authority did not bring on record whether the subsidy received by the Taxpayer directly or indirectly resulted in acquisition of any asset and, hence, the subsidy received cannot be deducted from the WDV of plant and machinery.

[For more details on all these cases, please refer to EY Tax Alert dated 30 December 2013]
Creation of taxable presence of foreign companies in India

Sourcing and procurement support activities

In the September 2013 edition of this newsletter, we had dealt with the taxability of procurement services of foreign company in India in the case of Nike Inc. (TS-248-HC-2013(KAR)), where the Karnataka HC had held that such activities did not create taxable presence in India. Recently, the SC dismissed Tax Authority’s SLP against Karnataka HC ruling in the case of Nike Inc.

In the case of Tesco International Sourcing Ltd. (Taxpayer) v. DDIT (IT) (TS-7-ITAT-2014(Bang)), Tesco Hong Kong was established in Hong Kong as a buying agent for Tesco group companies to source products at competitive prices. The Taxpayer, Indian Liaison Office (LO) of Tesco Hong Kong, was established to act as a communication channel between Tesco Hong Kong and manufacturers for sourcing apparels from India and undertaking liaison activities such as coordinating with manufacturers. The Tribunal held that purchase exclusion under the ITA was applicable to the Taxpayer’s case and, therefore, no income was derived by the Taxpayer in India through its operations as an LO in India.

(For more details (Nike Inc), refer Tax and Regulatory Quarter, September 2013 edition)

Sales promotion activities

The Delhi Tribunal, in the case of Brown & Sharpe INC. (Taxpayer) v. ACIT (TS-15-ITAT-2014(Del)), ruled on the taxability of sales promotion activities carried out by an LO on behalf of its Head Office (HO). With regard to the facts of the case, the Tribunal ruled that the LO was engaged in promoting sales in India and, hence, income attributable to the LO is taxable in India.

(For more details, please refer EY Alert dated 20 January 2014)

Other significant decisions

HC on deductibility of “secret commission”

The Punjab and Haryana HC, in the case of CIT v. Dhanpat Rai & Sons (Taxpayer) (TS-23-HC-2014(P & Hi)), was concerned with the issue of deductibility of secret commission and expenditure incurred on distribution of free specimen books to teachers by a taxpayer engaged in the publication of books for students. The HC remitted the matter to the Tribunal for considering the impact of Explanation to Section 37(1) of the ITA, which provides that expenditure incurred by a taxpayer for any purpose, which is an offence or which is prohibited by law shall not be allowed as deduction from business income. However, while remitting the matter, the HC observed that any secret commissions/payments made to secure an unfair advantage would necessarily be repugnant to law. Transactions, which are not transparent, offend normal business practice, must suffer scrutiny. Such unexplained and unvouched expenditure, if allowed, is likely to encourage illegal payments, evasion of tax and unscrupulous practices at both ends. Accordingly, such expenditure is likely to fall within the scope of the explanation and, hence, not allowable as a deduction.

(For more details, please refer EY Alert dated 24 January 2014)

Interest for default in payment of advance tax not applicable to NRs

In the December 2013 edition of this newsletter, we had dealt with Delhi HC ruling in the case of DIT v. Alcatel Lucent USA Inc. wherein the HC upheld chargeability of interest under Section 234B of the ITA in case of default in payment of advance tax by a non-resident (NR).

Recently, the Mumbai Tribunal in the case of ADIT v. Valentine Maritime (Taxpayer) (TS-605-ITAT-2013) decided this issue in favor of the Taxpayer. The Tribunal relied on the jurisdictional Bombay HC ruling in NGC Network Asia LLC (2009) 313 ITR 187 (Bom) and held that though the levy of interest was mandatory, it could not be levied as the Taxpayer’s income was liable to deduction of tax at source under the ITA.
Recent decisions on taxation of royalty/FTS payments

Summarized below are some decisions on royalty and FTS, also considering relevant DTAA provisions:

<table>
<thead>
<tr>
<th>Case law</th>
<th>Payment description</th>
<th>Ruling</th>
</tr>
</thead>
</table>
| Nisso Lwai Corporation, Japan v. ACIT [ITA No. 372/Vizag/2002] confirmed in [ITA No.612 of 2013] Andhra Pradesh HC | Fees for design and engineering documentation | • All the parts of transactions have taken place outside India and hence, the impugned transaction falls outside the purview of Indian taxation. HC relied on SC ruling in Ishikawajima Harima Heavy Industries Ltd. [288 ITR 408]
• Alternatively, supply of design and engineering drawings is in the nature of “plant” and since the preparation and delivery has taken place outside India, the same cannot be subjected to tax in India. |
| Marriott International Licensing Co BV v. DDIT [TS-621-ITAT-2013-Mum] Mumbai Tribunal India-Netherlands DTAA | Payment received for providing marketing services outside India pursuant to international sales and marketing agreement | “Royalty” is a payment made for use/right to use of an existing property and not for creation of a defined property. Therefore, payment, which according to the Tax Authority, facilitated brand building/creation, did not qualify as “royalty.” |
| DDIT v. MSM Satellite (Singapore) Pte. Ltd. [TS-664-ITAT-2013-Mum] Mumbai Tribunal India-Singapore DTAA | Payments made by NR to another NR for acquisition of right to broadcast cricket matches | Taxpayer being an NR payer and absence of economic link between payment of royalty and alleged PE of NR payer, royalty does not arise in India. |
| K. Bhagyalakshmi v. DCIT [TS-647-HC-2013-Mad] Madras HC Section 9(1)(vi) of the ITA. | Payment made on purchase of Indian film rights. All rights, including theatrical and commercial rights of distribution, exhibition and exploitation and rights to reproduce that film were assigned to the payer. | In view of the below factors, HC held the transaction to be of a sale and not royalty.
• All satellite and broadcasting rights, copyrights stood transferred in favor of the payer.
• The transfer was without restrictions to geographical area.
• The Censor certificate and all other documents were also handed over to the taxpayer for their exclusive possession and enjoyment.
• Payer was free to assign their rights to third parties.
• The agreement was irrevocable and was for a perpetual period of 99 years. |
### DTAA Updates

**New DTAA between India and Macedonia signed**

The GoI signed a DTAA with the Republic of Macedonia on 17 December 2013. The significant aspects of the DTAA are lower withholding tax rate of 10% on dividend, interest, royalties and FTS; provisions for effective exchange of information. The new DTAA also includes a Limitation of Benefit (LOB) provision to ensure that the benefits of the DTAA are availed by genuine residents of the two countries. A formal notification giving effect to the DTAA is yet to be issued by the GoI.

(Source: CBDT Press release dated 17 December 2013)

**New DTAA between India and Republic of Fiji signed**

The GoI signed a DTAA with the Republic of Fiji on 30 January 2014. The significant aspects of the DTAA are lower withholding tax rates of 10% on dividend, interest, royalties and FTS; provisions for effective exchange of information. Capital gains from the sale of shares will be taxable in the country of source. The DTAA, also provides for effective exchange of information and assistance in collection of taxes. Anti-abuse provisions to ensure that the benefits of the DTAA are availed of only by the residents of the two countries are also present. A formal notification, giving effect to the Agreement, is yet to be issued by the GoI.

(Source: CBDT Press Release dated 30 January 2014)

**DTAA between India and Albania enters into force**

The India-Albania DTAA, signed on 8 July 2013, entered into force on 4 December 2013. The treaty generally applies from 1 January 2014 for Latvia and from 1 April 2014 for India.

(Source: Notification No.2/2014[F.No.501/1/2003-Ftd-I]/SO 47(E), Dated 7 January 2014)

**Protocol amending India-UK DTAA notified**

The Protocol amending the India-UK DTAA was signed on 30 October 2012. The GoI has now notified that the Protocol shall be in force in India from 27 December 2013.

(Source: CBDT Press Release dated 20 December 2013)

---

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles I through III deal with amendment of definition of “person,” “resident of a Contracting State” so as to enable entities such as UK partnerships to access the India-UK DTAA provisions</td>
<td>27 December 2013</td>
</tr>
<tr>
<td>Article IV deals with replacement of the existing article on dividends with a new article on dividends</td>
<td>27 December 2013</td>
</tr>
<tr>
<td>Article V deletes Article 25 of the UK DTAA on Partnerships</td>
<td>27 December 2013</td>
</tr>
<tr>
<td>Articles VI through VIII deal with exchange of information, tax examinations abroad and assistance in collection of taxes</td>
<td>These provisions have a retroactive impact and apply even in respect of earlier matters (even prior to 27 December 2013)</td>
</tr>
<tr>
<td>Article IX incorporates a new LOB clause</td>
<td>27 December 2013</td>
</tr>
<tr>
<td>Where it pertains to withholding tax provisions</td>
<td>Payments made on or after 27 December 2013</td>
</tr>
<tr>
<td>Where it pertains to levy of taxes</td>
<td>Income in respect of Indian tax years beginning 1 April 2014 and subsequent years</td>
</tr>
</tbody>
</table>


### Tax Information Exchange Agreements (TIEA) updates

**India-San Marino TIEA signed and enters into force**

A TIEA between San Marino and India has been signed and came into force on 19 December 2013. Salient features of the TIEA include (i) exchange of information and transparency relevant to the administration and enforcement of the domestic tax laws, (ii) exchange of banking and ownership information and (iii) provision for representatives of competent authority of one country to enter the other country to interview individuals and examine records.

(Source: CBDT Press Release dated 20 December 2013)
India-Belize TIEA signed and enters into force

A TIEA desiring to facilitate the exchange of information with respect to taxes between Belize and India, signed on 18 September 2013 entered into force on 25 November 2013. The TIEA applies from 25 November 2013.

(Source: Notification No. 3/2014[F.No.503/4/2012-Ftd-I]/SO 48(E), dated 7 January 2014)

OECD updates

OECD provides an update on BEPS Action Plan

On 23 January 2014, the Organization for Economic Cooperation and Development (OECD) hosted a webcast on the ongoing project to address base erosion and profit shifting (BEPS) – BEPS Action Plan: Update on 2014 Deliverables. A replay of the webcast can be found on the OECD website. The webcast provided an overview of the OECD’s activity with respect to its July 2013 Action Plan on Base Erosion and Profit Shifting. The discussion focused, in particular, on those Actions with a September 2014 delivery date.

Source: OECD
(For more details, refer EY Global Tax Alert dated 23 January 2014)

OECD releases Common Reporting Standard

On 13 February 2014, the OECD, at the request of the G8 and the G20, released a model Competent Authority Agreement (CAA) and Common Reporting Standard (CRS) designed to create a global standard for the automatic exchange of financial account information. The publication of the CAA and CRS is a significant structural step in the governments’ efforts to improve cross border tax compliance. This follows a raft of tax compliance legislation such as the US Foreign Account Tax Compliance Act (FATCA) and active campaigns of voluntary disclosures and legal procedures, most recently in Germany and Italy. The CRS represents another global compliance burden for financial institutions and increases the risks and costs of servicing globally mobile wealthy customers – an otherwise attractive customer segment.

Source: OECD
(For more details, refer EY Global Tax Alert dated 20 February 2014)

OECD updates schedule for stakeholder input in BEPS project

On 20 February 2014, the OECD released an updated timetable for its work on the areas of the Action Plan on Base Erosion and Profit Shifting (BEPS) where outputs are expected by September 2014. The new timetable includes specific dates for publication of discussion drafts, deadlines for comment and public consultation sessions.

The specified dates are as follows:

<table>
<thead>
<tr>
<th>Action</th>
<th>Particulars</th>
<th>Discussion Draft publishing date</th>
<th>Deadline for comments</th>
<th>Public consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action 6</td>
<td>Preventing tax treaty abuse</td>
<td>17 March 2014</td>
<td>11 April 2014</td>
<td>14-15 April 2014</td>
</tr>
<tr>
<td>Action 1</td>
<td>Tax challenges of the digital economy</td>
<td>24 March 2014</td>
<td>14 April 2014</td>
<td>23 April 2014</td>
</tr>
<tr>
<td>Action 2</td>
<td>Hybrid mismatch arrangements</td>
<td>4 April 2014</td>
<td>4 May 2014</td>
<td>15-16 May 2014</td>
</tr>
</tbody>
</table>

It should be noted that the OECD document indicates these dates are subject to change.

Source: OECD
(For more details, refer EY Global Tax Alert dated 21 February 2014)
German Federal Fiscal Court holds treaty override unconstitutional

In a decision published on 12 February 2014 (BFH 11 December 2013, I R 4/13), the German Federal Fiscal Court (BFH) held that the treaty override by domestic German tax legislation was unconstitutional.

According to the facts of the case, a German limited partnership (GmbH & Co. KG – “KG”) paid interest to an Italian resident, who also owned an interest in the KG. Citing a 2008/2009 amendment of the German tax law, the German Tax Authority reclassified the interest income as German business income of the partnership and claimed German taxation of the interest under the business profits article of the Germany-Italy DTAA. This had a consequence of denying Italy the right to tax interest under the interest Article of the DTAA.

Under German domestic tax law, interest paid to a partner of a German business partnership is re-characterized as (partnership) business income and taxed accordingly in the hands of the partner. This principle is also upheld in the DTAA context by defining such income as business income for purposes of the application of a DTAA. This provision was introduced to override a prior case law of the BFH, which held that interest paid to a treaty resident partner cannot be taxed in Germany because of the interest article of the DTAA.

In its decision, the BFH argues that this unilateral reclassification of remunerations, which generally fall under a (specialty) article of a treaty (such as royalty or interest payments in an OECD model type tax treaty) as (deemed) business profits, is indeed an override of those provisions. In the opinion of the BFH, overriding bilateral treaty provisions that have been negotiated between two States to allocate the right to tax constitutes an unconstitutional breach of international law.

Consequently, the BFH has submitted the question to the German Federal Constitutional Court. The upcoming decision by the Federal Constitutional Court, which would be its first one on this topic, could impact a large number of other provisions in German tax laws currently unilaterally overriding the provisions of DTAA.

(For more details, refer EY Global Tax Alert dated 19 February 2014)

Dutch Supreme Court confirms tax treatment of equity instruments with debt characteristics

On 7 February 2014, the Dutch Supreme Court issued its decisions in two cases concerning the qualification for Dutch tax purposes of equity instruments with certain characteristics of debt. According to the Dutch Supreme Court, the qualification of an equity instrument for tax purposes in principle follows the corporate law characterization, even if the instrument is considered debt under accounting rules. As a result, Australian mandatory redeemable preference shares were considered equity for Dutch tax purposes. Similarly, shares with certain contractual debt characteristics issued as part of a complex refinancing transaction were considered equity for Dutch tax purposes. The Supreme Court did not find reasons for an exception to the main rule in these cases.

It can be derived from these Supreme Court judgments that a deviation from the corporate law qualification of equity instruments for Dutch tax purposes only seems possible in very limited circumstances.

(For more details, refer EY Global Tax Alert dated 7 February 2014)

Belgian Constitutional Court rules on foreign tax credit in case of insufficient taxable base

On 29 January 2014, the Belgian Constitutional Court ruled on the constitutionality of the Belgian foreign tax credit system for interest received by a company with an insufficient taxable base. It found that the obligation for such companies to add the amount of the foreign tax credit to the corporate tax base is unconstitutional, insofar such credit cannot be effectively imputed.

Companies receiving foreign-source interest income are entitled to a foreign tax credit in Belgium that is fully creditable vis-à-vis the corporate tax due. When calculating the corporate income tax liability, the foreign tax credit is added to the corporate tax base as a disallowed item (gross-up). The corresponding increase in the tax base negatively impacts loss-making companies or companies with a tax base that is lower than the foreign tax credit. According to the Belgian Tax Authority’s interpretation of the law, the amount of the foreign tax credit should offset tax losses and/or other deductions carried forward, even while the excess foreign tax credit cannot be refunded or carried forward.

(For more details, refer EY Global Tax Alert dated 3 February 2014)
Vietnam releases circular on treaty benefit application

Vietnam issued Circular 205 (Circular 205), providing rules on the applicability of tax treaty benefits and general anti-abusive provisions (GAAR). Circular 205 became effective from 6 February 2014.

The most salient changes in Circular 205 from the previous circular are the introduction of GAAR and the assertion and expansion of the beneficial ownership provisions. Generally, a tax treaty benefit will be denied if the main purpose of a transaction or arrangement is tax abusive and/or if a treaty benefit claimant is not a true beneficial owner.

Circular 205 also provides various examples to clarify applicability of the tax treaty benefit, such as the determination of the PE, the determination of profits attributable to the PE and capital gains tax arising from a share transfer of a Vietnamese entity whose assets primarily consist of immovable property.

(For more details, refer EY Global Tax Alert dated 14 January 2014)

Colombia issues regulations on taxation of PEs

Colombia’s Ministry of Finance and Public Credit issued Decree 3026 (27 December 2013), regulating the taxation of PEs and branches of foreign entities in Colombia.

For purposes of the PE definition, “foreign company” includes not only companies and foreign entities, but foreign individuals who develop any business or activity in Colombia. Under the Decree, in the case of individuals, a business or activity includes the exercise of professional services, the performance of personal services and the performance of independent activities.

To verify a fixed place of business, the Decree provides that a taxpayer must satisfy the following requirements:

- A place of business must exist in Colombia. However, the taxpayer only has to show that it has a space in Colombia. It does not have to show exclusivity to occupy the space or a formal title to occupy the space.
- The space has to be located in a certain place and have a certain degree of permanence.
- The taxpayer performs all or a part of its activities in that space.
- The Decree also establishes exceptions for when a PE is not verified because of preparatory or auxiliary activities. Those activities include storage, advertising and marketing.

If the foreign entity demonstrates that it qualifies as a PE through the presentation of its tax identification registration (RUT), the withholding agent may withhold at the rates and under the conditions applicable to local transaction. The withholding agent may request verification of PE status from the tax authorities (DIAN).

(For more details, refer EY Global Tax Alert dated 8 January 2014)

Turkish Revenue Authority’s rulings provide guidance on IT-related transactions

Recently, several rulings have been issued by the Turkish Tax Authority regarding information technology (IT)-related transactions. These rulings are on tax implications of electronic commerce, leasing of servers, and use of electronic currency, and among other topics are issues regularly confronting Turkish companies. However, there are no direct regulations covering these issues at this time. The following is a summary of recent rulings that currently serve as the principal source to understand the perspective of the Turkish Revenue Authority on IT-related transaction issues.
Domain name purchase
- Domain name and IP addresses purchased from abroad are in the nature of royalty and corporate tax withholding must be applied over such payments.

Web hosting
- Payment by Turkish company, in return for the server service received for its website from, say, a Dutch resident company would be treated as business profits. No withholding, since the company resident in the Netherlands does not carry out business activities through a PE in Turkey.

Maintaining a server abroad
- No withholding, since purchase and installation of computer hardware from NR company are in the nature of commercial income. However, annual maintenance and operation payments for the computer hardware purchased from, say a German company by a Turkish company, are in the nature of independent personal service income and corporate tax withholding is to be applied to such payments.

Leasing a server abroad
- Payments made for leasing a server and the internet services from abroad should be treated as royalty. [Article 12 of Turkey-US and Turkey-UK DTAAAs (Para 3) and Turkey-Netherlands DTAA (Para 4)]

Use of electronic money
- Since the transfer (sale) of electronic money by a Turkish company to the distributor and to final consumers by the distributor is not performed in return for a delivery or service, it is not subject to value added tax (VAT).

Purchase of game codes
- The amounts paid in return for invoices to the NR company upon purchase of game codes owned by this company should be regarded as commercial income and therefore, should not be subjected to withholding tax.

Web design
- The income obtained by a NR company, which designs website owned by a Turkish company are in the nature of independent personal service income.

Does an internet site constitute a work place?
- The sale of goods advertised over internet sites in Turkey should be regarded as commercial income. Accordingly, conducting sales via leasing or purchasing a server located in Turkey should be taxed in Turkey.

French Government proposes anti-hybrid provision

In light of the current discussions raised by the OECD associated with the BEPS report, the French Government, within the draft 2014 Finance Bill, has proposed adding a new restriction on interest deductions aimed at hybrid instruments (the anti-hybrid provision).

According to the anti-hybrid provision, interest paid out by a French enterprise to a related French enterprise or a NR enterprise will no longer be tax deductible for French Corporate Income Tax (CIT) purposes if the interest paid out is not subject to tax at the level of the beneficiary company at a rate of at least 25% of the French CIT that would have been due under the standard French rules. In the case where the lender is domiciled or established outside France, the French CIT is determined as if the lender were established or domiciled in France.

(For more details, refer EY Global Tax Alert dated 4 December 2013)

German Federal fiscal court rules on S Corporation treaty protection under 2006 German-US tax treaty

On 30 October 2013, the German Federal Fiscal Court published a ruling regarding the treaty protection of a US S Corporation under the 2006 protocol of the German-US tax treaty (treaty). The Court ruled that S Corporation is a “body corporate,” which was entitled to the 5% dividend withholding tax rate under Article 10(2)(a) of the treaty.

The 5% rate was contested by the German Tax Authority based on the argument that the S Corporation is not a resident person under the treaty, as it is not a taxable entity in the US because its income is taxed in the hands of its shareholders.

(For more details, refer EY Global Tax Alert dated 2 December 2013)
Key highlights of the Interim Budget 2014-15

The Finance Minister (FM) presented the Interim Budget for 2014-15 in the Indian Parliament on 17 February 2014. In keeping with the convention in presenting an Interim Budget, amendments have not been proposed to the tax laws. Absence of amendment in the tax laws has consequences such as the tax holiday period for the power sector and concessional tax rate of 15% on dividends received from overseas subsidiary coming to an end on 31 March 2014. Direct Taxes Code (DTC), which was envisaged to replace the existing ITA is expected to be placed on the website for public discussion with the FM hoping that it would be passed in FY14-15.


(For more details, please refer EY Alert dated 17 February 2014)

CBDT clarifies disallowance for non-deduction of taxes applicable in case of expenses “paid” during the year

In the June 2013 and September 2013 editions of this newsletter, we had dealt with the controversy of whether Section 40(a)(ia) (Section) disallowance applies to amounts, which are already “paid” during the year without taxes being withheld. The Special Bench of the Vishakhapatnam Tribunal, in the case of Merilyn Shipping and Transports2 and Allahabad HC in the case of Vector Shipping Services3 held that expenses, which are already paid during the tax year could not be subject to disallowance under the Section. Subsequent decisions of the Calcutta HC, in the case of Crescent Export Syndicate4, and Gujarat HC in the case of Sikandarkhan N. Tunvar5 overruled the SB decision and ruled in favor of the Tax Authority.

In view of the various divergent rulings, the CBDT issued a Circular clarifying the position on interpretation of the Section. The Circular lays down the view of the Tax Authority on the issue which is as follows:

- Disallowance under the Section applies not just to amounts, which are “payable” as at the end of a tax year but also on amounts, which are payable at any time during the year.
- The statutory provisions in the context of the Section are amply clear and the term “payable” would include the amounts, which are “paid” during the year.

Furthermore, the CBDT Circular clarifies that in case where any HC has taken a view, which is contrary to the CBDT Circular, the HC decision would be binding on the Tax Authority functioning within its jurisdiction.

The Chennai Tribunal in the case of ITO v. Theekathir Press [ITA No. 2076(Mds)/2012] held that in view of the divergent judicial pronouncements, rule of judicial pronouncements prescribes benefit in favor of the taxpayer, and therefore, restricted disallowance of amounts “payable” at the end of the year only. It is important to note that this decision was pronounced before the CBDT Circular was issued and, hence, has not considered the Circular.

(Source: CBDT Circular No. 10/DV/2013 Dated 16 December 2013)

CBDT relaxes withholding on Service tax component on payments to residents

The CBDT has relaxed withholding requirement on Service tax component on all payments to residents where Service tax component, comprised in the amount payable to a resident, is indicated separately. Accordingly, withholding shall apply on the amount payable excluding such Service tax component. As a corollary, withholding may apply on the full amount where the amount payable is inclusive of Service tax and is not separately indicated.

(Source: CBDT Circular No. 1/2014)

(For more details, please refer EY Alert dated 17 January 2014)

Stakeholder Consultations by the Tax Administration Reform Commission (TARC)

In the September 2013 edition of this newsletter, we had dealt with setting up of TARC, an advisory body to the Ministry of Finance set up to recommend measures for reforms required in tax administration to enhance its effectiveness and efficiency. Pursuant thereto, the TARC has released four points to be included in its first report as below:

- To review the existing organizational structure and recommend appropriate enhancements
- To review the existing business processes of tax administration
- To review the existing mechanism of dispute resolution and,
- To review the existing mechanism and recommend measures for improved taxpayer services and taxpayers education program.

---

2 [146 TJI 1]  
3 [357 ITR 642]  
4 [262 CTR 525]  
5 [357 ITR 312]
The focus of the Commission is on tax administration reform and not on the general tax policy and legislation. The first report is to be submitted to the GoI within six months of the Notification.


CBDT explains provisions of the Finance Act, 2013 (FA 2013)

The CBDT has issued Circular No. 03/2014 dated 24 January 2014 explaining the provisions of FA 2013. Some important provisions explained include (i) Tax Residency Certificate (ii) Time limit for completion of assessment where reference is made to Transfer Pricing Officer (iii) Exemption from requirement of furnishing Permanent Account Number for certain NR bond holders, etc.


CBDT relaxes time-limit for filing Income Tax Return Acknowledgments (ITR-V)

As per procedure laid down by the CBDT, physical copy of ITR-V is to be furnished to the Centralised Processing Centre (CPC), Bengaluru within 120 days from the date of electronic filing of RoI, failing which RoI will be deemed to be never furnished. A large number of such electronically filed returns remain pending with the Tax Authority for want of receipt of valid ITR-V Certificate at CPC. In order to mitigate the grievances of the taxpayers, the CBDT has further extended the date for filing ITR-V for tax years 2008-09, 2009-10 and 2010-11 till 31 March 2014, for returns e-filed with refund claims within their due date time. Such tax returns will be processed by the CPC within six months from the end of the month in which intimation is received.

(Source: Circular No. 4/2014 [F.NO.225/198/2013-ITA.II], dated 10 February 2014)

CBDT clarifies on disallowance of expenditure relatable to exempt income even when no exempt income is actually earned

The CBDT has clarified that expense disallowance for exempt income is required even if, in a particular tax year, no exempt income is actually earned. The legislative intent is to allow only that expenditure, which is relatable to earning of income and it, therefore, follows that the expenses, which are relatable to earning of exempt income have to be considered for disallowance, irrespective of whether any such income has been earned during the tax year or not.

(Source: CBDT Circular No. 5/2014 dated 11 February 2014)
(For more details, please refer EY Alert dated 17 February 2014)

CBDT clarifies no additional income tax on mutual fund redemption receipts/bonus issue

Section 115R of the ITA, inserted by FA 2013, provides for levy of additional income tax on distributed income to mutual fund (MF) unit-holders. The CBDT has now clarified that such additional income tax would not apply in case of redemption or buy-back or on bonus issue of MF units since such income is not of the nature of income “distributed” to unit holders by way of dividend.

(Source: CBDT Circular 6 of 2014 dated 11 February 2014)
In case of any conflict between the jurisdictional High Court (HC) and Central Board of Excise & Customs (CBEC) circular, decision of the jurisdictional HC is binding on the department rather than CBEC circular.

The assessee had availed CENVAT credit on sales commission services obtained by the assessee. However, the revenue contended that sales commission services were not eligible for CENVAT credit in view of the definition of input services under the CENVAT Credit Rules, 2004, relying on the decision of the jurisdictional HC in the case of Cadila Healthcare. However, the assessee relied on the CBEC circular dated 29 April 2011, which provided that the assessee shall be entitled to CENVAT credit on sales commission services obtained by him. The assessee also relied on the Punjab & Haryana HC decision in the case of Ambika Overseas, which was contrary to the decision in the case of Cadila Healthcare. The question before the Court was whether the assessee will be entitled for CENVAT credit on sales commission services, in view of the CBEC circular and another HC decision to the contrary.

Held, that if there is any conflict between the jurisdictional HC and the CBEC circular, the decision of the jurisdictional HC is binding on the department rather than CBEC circular.

Parking service, regardless of wherever it is carried on, cannot be considered as taxable service, since it is specifically excluded from the definition of taxable services.

Hence, subject to Service tax. However, the assessee contended that parking cannot be considered as a taxable service as it was specifically excluded from the definition of the taxable service rendered by renting of immovable property. The question before the Court was whether the assessee is liable to Service tax for the car parking service rendered by it. Held, that since parking services have been specifically excluded from the definition of the taxable service, it will stand excluded in entirety, regardless of wherever it is carried on. Hence, the assessee is not liable to pay Service tax on the parking services.

Validity of Rule 5A(2) of Service Tax Rules, 1994, requiring production of records and other documents, upheld by the HC.

The assessee challenged the validity of Rule 5A(2) of the Service Tax Rules, 1994, on the ground that the provisions of Rule 5A(2) requiring the production of necessary documents by the assessee are contrary to Section 72A of the Finance Act, 1994, providing for Special Audit. The assessee contended that the Rule 5A(2), which empowers the deputation of departmental officers as auditors was arbitrary, illegal and ultra vires the provisions of the Finance Act, 1994. Held, that for the purpose of audit, the material can be collected by the officer authorized by the Commissioner or by the Auditor himself. However, the audit will be performed only by the Chartered Accountant. Rule 5A(2) merely facilitated the provisions of Section 72A relating to Special Audit. It only empowered the authorized officers to demand necessary documents such as trial balance, Income tax audit report to facilitate the correctness of books of accounts, and ultimately the audit will be conducted by the Audit Party headed by the Chartered Accountant/Cost Accountant, and deputed by the Commissioner.

Parking service, regardless of wherever it is carried on, cannot be considered as taxable service, since it is specifically excluded from the definition of taxable services.
CESTAT, Mumbai

Reimbursement of salary for engaging the staff of the assessee will constitute consideration for supply of manpower service

Finance Act, 1994; in favor of revenue

The assessee had leased out plant and machinery to Bajaj Organic Ltd. (Bajaj) under an agreement and there was also an understanding between them for engaging the staff of the assessee in the factory run by Bajaj, for which the assessee received consideration. The salary of the staff was reimbursed by Bajaj on a monthly basis and the staff was working under the administrative guidelines of Bajaj. The question before the Tribunal was whether this activity will constitute supply of manpower liable to Service tax. Held, that the activity comes within the purview of supply of manpower and the assessee will be liable to discharge Service tax. The contention of the assessee that they have not received any consideration for the activity, since only 75% of the salary has been reimbursed by Bajaj, was rejected by the Tribunal. The Tribunal also distinguished the decisions in the cases of Arvind Mills Ltd., Paramount Communication Ltd. and Volkswagen on the basis of facts, as the subject matter in these cases was the deputation of staff in group companies. Hence, it was held that the ratio in these decisions could not be applied in the present case.

Sanjivani (Takli) Sahakari Sakhar Karkhana Ltd. v. Commissioner of Central Excise & Customs, Aurangabad [TS-44-Tribunal-2014 (Mum)-ST]

CESTAT, Delhi

When the principal activity is manufacture, the secondary activities cannot be classified as “Cargo Handling Service” in the absence of proper bifurcation of the activities

Finance Act, 1994; in favor of assessee

The assessee was engaged in provision of services to its client for packing, labelling, loading and unloading of finished goods in the factory premises of the client. The revenue contended that the activity will amount to “Cargo Handling Service” and hence, subject to Service Tax. The assessee contended that loading and unloading of the final product can take place only after the completion of the principal activity of packing and labelling. Held, that packing and labelling was the primary activity and the movement of the packed goods was the secondary activity. Since the activity of packing and labelling amounts to “manufacture” according to the Central Excise Tariff Act, 1985, ancillary activity of loading and unloading will not be considered as “Cargo Handling Service.”

Subhash Khandelwal Construction (P) Ltd. v. Commissioner of Central Excise, Jaipur [2014 (1) TMI 1197-CESTAT NEW DELHI]

CESTAT, Mumbai

Failure of the service recipient to pay Service tax to the service provider will not take away the liability of the service provider to discharge Service tax liability

Finance Act, 1994; in favor of revenue

The assessee had undertaken certain activities for its customer, which included removal of material, drilling, excavation, loading, transport and dumping etc. The assessee contended that it did not discharge Service tax liability for the period in question, as the service recipient did not reimburse the Service tax to the assessee. The Tribunal rejected this contention of the assessee on the grounds that Service tax liability is not dependent on whether the service recipient makes the payment of Service tax or not. The taxable event is that of rendering of service and the liability has to be discharged on receipt of consideration.

High Court, Madras

**Suo moto re-credit of CENVAT credit reversed earlier is admissible, without filing a refund application under section 11B of the Central Excise Act (CEA), 1944.**

CENVAT Credit Rules, 2004; in favor of assessee

The assessee was engaged in the manufacture of both dutiable and exempted goods and was availing CENVAT credit on various input services. However, since the assessee had not maintained separate accounts for input services, the revenue raised a duty demand for 10% of the value of exempted goods cleared during that period, for the common input services utilized. Accordingly, the assessee reversed the entire input service credit availed by them. Subsequently, the assessee took CENVAT credit in respect of the services specified in Rule 6(5) of CENVAT Credit Rules, 2004, on its own, without making a formal application. The revenue rejected the *suo moto* re-credit and contended that the assessee should have filed a refund application under section 11B of the CEA, even for a reversal of entry, in order to avoid the possibility of unjust enrichment. Held, that there was only an account entry reversal and there was no outflow of funds from the assessee to result in filing an application under section 11B of the CEA. Revenue’s contention that there was bound to be an unjust enrichment had no substance, as the assessee had merely availed credit of duty paid on services rendered. Hence, assessee was entitled to take *suo moto* re-credit of without filing an application under section 11B of the CEA.

ICMC Corporation Ltd. v. Commissioner of Central Excise, Chennai [TS-12-HC-2014 (MAD)]

High Court, Madras

**Interest will be levied on the wrongful availment of CENVAT credit, even if it reversed before its utilization**

CENVAT Credit Rules, 2004; in favor of revenue

The assessee had availed CENVAT credit in respect of certain inputs used for construction purpose. The credit claimed was disallowed as the goods did not qualify as “inputs” for the purpose of CENVAT Credit Rules, 2004. However, the revenue demanded interest and penalty for irregular availment of CENVAT credit. The assessee contended that there was sufficient balance in its CENVAT credit account for the period and the credit availed had not been utilized. The assessee also sought to distinguish the SC judgment in the case of Ind-Swift Laboratories Ltd., wherein it was held that interest will be payable from the date the CENVAT credit was wrongly availed. The assessee contended that the facts of the Ind-Swift judgment were different as it was a case where the CENVAT credit was taken and utilized, and not a case where the credit was reversed before utilization. The question before the Court was whether the assessee will be liable to pay interest and penalty for irregular availment of credit. Held, that the assessee will not be liable to pay penalty in the absence of an intention to evade payment of duty. As regards the payment of interest, the Court rejected the assessee’s attempt to distinguish the SC’s ruling in the case of Ind-Swift on the basis of facts. It was held by the Court, that the assessee will be liable to pay interest from the date of wrongful availment of credit even if it was reversed prior to its utilization.

Commissioner of Central Excise, Chennai-IV Commissionerate v. Sundaram Fasteners Ltd. [TS-31-HC-2014 (MAD)-EXC]

CESTAT, Mumbai

**CENVAT credit distributed by supplier of raw material, as an “Input Service Distributor” cannot be availed by job worker**

CENVAT Credit Rules, 2004; in favor of revenue

The assessees were engaged in the repacking and relabeling of goods procured by Merck Specialities Ltd. (Merck). The question before the Tribunal was whether the assessees were eligible to avail CENVAT credit of Service tax against the invoices issued by Merck as an “Input Service Distributor.” Held, that the assessees were the manufacturers and not Merck who had merely supplied raw material to the assessees. It was also observed by the Tribunal that the transaction was on principal-to-principal basis and the assessees and Merck were separate legal entities. Hence, it was concluded that the assessee (job-worker in the instant case) cannot be considered as an office/unit of Merck for the purpose of the definition of “Input Service Distributor” under the CENVAT Credit Rules, 2004, and hence, Merck will not be eligible to distribute credit to assessees.

Sunbell Alloys Co. of India Ltd. & Machsons Pvt. Ltd. v. Commissioner of Central Excise & Customs, Belapur [2014-TIOL-38-CESTAT-MUM]
CESTAT, Mumbai

CENVAT credit of inputs not intended for use in the manufacture of final goods, is ab-initio inadmissible.

CENVAT Credit Rules, 2004; in favor of revenue

The assessees, engaged in the manufacture of lubricating oil, availed CENVAT credit of the duty paid on imported base oil. These goods were imported by Valvoline Cummins Ltd. (VCL) and transferred to the assessee for storage purpose. The credit so taken was reversed by the assessee when the base oil was returned to VCL or other consignees as directed by VCL. The revenue contended that the credit taken was inadmissible as the goods were never intended for use in or in relation to manufacture of excisable goods. The question before the Tribunal was whether the assessee had contravened the provisions of the CENVAT Credit Rules, 2004. Held, that since the base oil was never intended for use in or in relation to manufacture of final dutiable products, the assessee was ab initio ineligible for taking CENVAT credit. The assessee was also held liable to discharge interest liability on the credit wrongly taken from the date of taking of the credit to the date of reversal. However, penalty will not be leviable as there was no intention on the part of the assessee to evade duty.


CESTAT, Delhi

Definition of “place of removal” given under the CEA, 1944 is relevant only for goods chargeable to duty at ad valorem rate and in other cases, the place of removal will be the factory gate

CENVAT Credit Rules, 2004; in favor of revenue

The assessee was engaged in the manufacture of cement and cement clinkers, which were chargeable to Excise duty at specific rates and not at ad valorem rates. The goods were transported to the depots from where the same was sold to customers. The revenue disallowed CENVAT credit of Service tax paid for transportation from the depots to the customer’s premises on the ground that since the depot is the place of removal, “Goods Transport Agent” (GTA) service up to the depot only will be allowed. However, the assessee contended that since the sales were on Free on Rail destination basis, the customer’s premises will be the place of removal, given under the CEA, 1944. The definition of “place of removal” as given under Section 4(3) of the CEA states that, it will include a depot, premises of a consignment agent or any other place from where the goods are to be sold after their clearance from the factory. The question before the Tribunal was whether the definition of place of removal, given under CEA, can be adopted for the purposes of the CENVAT Credit Rules, 2004. Held, that the definition of “place of removal” under the CEA can be referred only for the purpose of goods chargeable to duty at ad valorem rate and will not be relevant for goods chargeable to duty at specific rates. In such a case, the natural meaning of the term “place of removal” will have to be adopted, which implied, the factory gate. Hence, the CENVAT credit in respect of GTA service from the depot to the customer’s premises will not be admissible.

Ultratech Cement Ltd. v. Commissioner of Central Excise, Raipur [TS-248-Tribunal-2013-EXC]
Central excise duty

CESTAT, Mumbai

Catalog products and promotional products, packed separately, will not constitute a combination package, and the promotional products have to be valued separately according to Rule 4 of the Central Excise Valuation Rules, 2000 (Valuation Rules).

Central Excise Act, 1944; in favor of revenue

The assessee, engaged in the manufacture of cosmetics, issued promotional products free of cost, along with its cosmetic products (catalog products). The promotional products and the catalog products were not issued in the same pack. The assessee was earlier determining the assessable value of the promotional products on the basis of the cost of manufacture plus notional profit according to a CBEC circular. This circular was later superseded by another CBEC circular, which required the valuation of free samples according to Rule 4 of the Valuation Rules. However, the assessee continued to determine the assessable value on the basis of the earlier circular. The assessee contended that the promotional pack and the trade pack constituted a combination package and it should be considered as a single assessable unit for the purpose of valuation. The revenue contended that free samples should be valued on the basis of Rule 4 of the Valuation Rules. The question before the Tribunal was regarding the basis of valuation of the promotional pack. Held, that the promotional pack and the trade pack cannot be considered as a combination package as they were packed separately.

The value of promotional packs distributed free of cost should be determined according to Rule 4 read with Rule 11 of the Valuation Rules.

L’Oreal India Pvt. Ltd. v. Commissioner of Central Excise, Pune-I [2014-TIOL-78-CESTAT-MUM]

CESTAT, Mumbai

Reduction in price on account of liquidated damages or penalty will be considered for determination of the transaction value for levy of Excise duty

Central Excise Act, 1944; in favor of assessee

The assessee, engaged in the manufacture and supply of electrical transformers, supplied transformers to various distribution companies. The purchase order provided for a price variation clause and also a penalty clause for supplies made beyond the agreed delivery schedule. The issue before the Larger Bench of the Tribunal was whether any deduction claimed by the buyer as compensation for the delay in the supply of goods by the manufacturer, under the contract, will lower the assessable value of the goods, in view of the amended section 4 of the Central Excise Act, which provides for the definition of transaction value. It was held by the Larger Bench of the Tribunal that, after the amendment of Section 4 and the statutory definition of “transaction value” in the Central Excise Act, whenever the buyer is liable to pay a lower amount than the generically agreed price as a result of a clause in an agreement, stipulating variation in the price, on account
of liquidated damages, irrespective of whether the clause is titled “penalty” or “liquidated damages”, the resultant price will be the “transaction value”, and such value shall be liable to levy of Excise duty, at the applicable rate.

Commissioner of Central Excise & Customs, Hyderabad-IV v. Victory Electricals Ltd. [TS-250-Tribunal-2013:EXC]

CESTAT, Ahmedabad

Non-payment of Sales tax on account of inter-unit stock transfer will not be considered as exempt from levy of Sales tax in absence of an exemption notification for the purpose of levy of SAD on clearances from EOU to DTA

Central Excise Act, 1944; in favor of assessee

The assessee, a 100% export-oriented unit (EOU), was engaged in the manufacture of pigments, inks etc. It was liable to discharge duty liability of 4% Additional Customs duty (SAD) equivalent to local Sales tax/VAT for clearances made to Domestic Tariff Area (DTA). The assessee, while clearing goods in DTA to its own unit under stock transfer, did not pay any Sales tax or SAD and claimed exemption under Notification 23/2003-Central Excise as amended by Notification 26/2005-Central Excise. The said notification exempted goods manufactured in an EOU and cleared in DTA from payment of Excise duty equivalent to the Additional duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 subject to the condition that the goods cleared into the DTA are not exempt by the State Government from payment of Sales tax or VAT. The revenue contended that the assessee will be liable to pay SAD as the condition of the notification was not satisfied. The question before the Tribunal was whether the assessee will be eligible to claim benefit under the said notification in respect of stock transfer to its own unit. Held, that an inter-unit transfer will not attract Sales tax/VAT as it will not be a sale, but that does not mean it was an exemption granted by the State Government. In the absence of any notification granting exemption for specified products from the levy of Sales tax, it will be incorrect to hold that the goods were exempted from Sales tax.

Micro Inks v. Commissioner of Central Excise, Customs and Service Tax, Daman [2014 (2) TMI 207-CESTAT AHMEDABAD]
CLEARANCE MADE IN DTA AGAINST ADVANCE AUTHORIZATION, WHERE PAYMENTS ARE NOT RECEIVED IN FOREIGN CURRENCY, WILL BE ADMISSIBLE FOR FULFILLING EXPORT OBLIGATION UNDER EXIM POLICY

Customs Act, 1962; in favor of assessee

The assessee had availed exemption under Notification no. 52/2003-Cus dated 31 March 2003, by making clearance to a DTA unit against Advance Authorization Scheme of Exim policy, which was considered as deemed export (and not physical export of goods outside India). The revenue contended that since the entire monetary realization of the assessee’s sales were effected in Indian currency, and not in foreign exchange, such sales could not be considered for the calculation of Net Foreign Exchange (NFE). Held, that DTA clearance against Advance Authorization, where payments are not received in foreign currency will be admissible for fulfilling export obligation under Exim policy, as the Tribunal observed that supplies made under Para 6.9 of Chapter 6 of the Exim policy were to be included while calculating NFE.

Exechon, Vadodara v. Commissioner of Central Excise & Service Tax, Vadodara-I [2014 (2) TMI 1061 – CESTAT Ahmedabad]

ADDITIONAL DUTY OF CUSTOMS NOT TO BE DETERMINED ON THE BASIS OF MAXIMUM RETAIL PRICE (MRP) VALUATION WHERE THE GOODS ARE PACKAGED MERELY FOR EASE OF TRANSPORTATION AND NOT INTENDED FOR RETAIL SALE

Customs Act, 1962; in favor of assessee

The assessee imported consignments of molded case circuit breakers (MCCBs), plugs and sockets. The plugs and sockets were not individually packed but were packed in bulk for ease of transportation. In case of MCCBs, no MRP was declared on the package. The question before the Tribunal was whether the goods were liable to additional duty of customs according to MRP-based valuation under section 4A of the Central Excise Act, 1944, as contended by the revenue, or on the basis of the transaction value as claimed by the assessee. Held, that the additional duty of customs cannot be determined on the basis of the MRP based valuation as MRP was not required to be declared on plugs and sockets as they were not in the packaged form. The MCCBs also, were packed for the purpose of ease of transportation and were not intended for retail sale.

Legrand (India) Pvt. Ltd. v. Commissioner of Customs (Import) [2014 (2) TMI 407 – CESTAT Mumbai]
High Court, Allahabad

Use of stent or valves in the course of performing surgical procedure will not constitute a “sale”

Uttar Pradesh Value Added Tax Act, 2008; in favor of assessee

The assessee had set up a super speciality hospital and was engaged in performing surgeries for patients. The revenue proposed to impose tax on the value of stents and valves used in providing medical services. The contention of the assessee was that the use of stents and valves in the course of a surgical procedure was incidental to the medical service provided by the hospital and hence, not liable to VAT. The question before the Court was whether any element of sale was involved in the transfer of property in goods in the course of execution of a contract for implantation of a stent or valve in the performance of a surgical procedure. Held, that the essential nature of the transaction between the patient and the hospital was of performance of a medical procedure. The charges towards drugs and other consumables will not render this transaction a “sale” under the Uttar Pradesh Value Added Tax Act. The Court also held that the deeming provisions of Article 366(29A) (Deemed Sales) of the Constitution will not be attracted in this case.

International Hospital Pvt. Ltd. v. State of Uttar Pradesh & Ors. [2014-VIL-48-ALH]

High Court, Madras

Transfer of business as whole will be eligible for sales tax exemption and assignment of separate values to the assets in the agreement will not go against the intention of the parties to sell the entire unit.

Tamil Nadu General Sales Tax Act, 1959; in favor of assessee

The assessee entered a business transfer agreement (BTA), for the sale and transfer of business of two of its units, as a going concern, for a consideration which also included a non-compete fee. The assessee claimed that the consideration for the sale of its units should be excluded from the sales turnover under the provisions of the Tamil Nadu General Sales Tax Act. However, the revenue rejected the exemption claimed by the assessee on the ground that separate values were given to movable and immovable assets, tangible and intangible assets in the BTA. Held, that the BTA contemplated the transfer of business as a whole in respect of two units. The bifurcation of price in the BTA will not go against the intention of the parties to sell the entire unit. Hence, when there is a transfer of a business as whole, it will be eligible for exemption from sales tax.

Eicher Motors Ltd. v. State of Tamil Nadu [2013-VIL-111-MAD]

High Court, Karnataka

Tax deduction from turnover will not be available in the absence of bifurcation of “cost price” and “tax” in the invoice

Karnataka Value Added Tax Act, 2003; in favor of revenue

The assessee was dealing in cigarettes, confectionery etc. and was registered under the Karnataka Value Added Tax (KVAT) Act, 2003. The revenue observed that the assessee had not collected the VAT separately in the tax invoice as required under the provisions of the KVAT Act, and hence, was liable to pay tax on the entire sales turnover. However the assessee contended that the tax invoice clearly mentioned that the selling price included VAT at 12.5% and the tax element was also shown separately in the bill. It was also bifurcated in the assessee’s books of accounts. The question before the Court was whether the assessee is entitled to the benefit of deduction of tax from the total value of bills, when the assessee had not shown the value of the goods and the tax payable thereon separately in the bill. Held, that under the provisions of the KVAT Act, the tax invoice should specifically mention the value of the goods on which the tax is payable. It should also specify the rate at which tax is collected and thereafter the total value of the goods should be specified by adding the tax to the value of goods. Since the assessee had not complied with the provisions, it will not be entitled to the benefit of tax deduction from the total value of bills. The Court also observed that mere mention of the value of goods and tax in separate columns in the books of accounts cannot be given due weightage.

Exchange of old television sets for new, will fall within the definition of sale/purchase

Rajasthan Sales Tax Act, 1994; in favor of revenue

The assessee had sold television sets to its customers in exchange of old ones under a scheme, and charged the differential amount to customers. The revenue contended that the assessee had not paid purchase tax on the amount received by way of credit notes and raised a demand for the payment of purchase tax on the same. The assessee contended that the transaction was neither a sale nor a purchase and did not come within the definition of sale as given in the Rajasthan Sales Tax Act. The issue before the Court was whether the transaction amounted to sale and purchase under the provisions of the said Act. Held, that there is a sale of television sets by the assessee to its customers as even an exchange or barter will fall within the definition of sale/purchase under the Act, and hence, the assessee will be liable to pay tax under the Act.

_Bhatia Agency v. Commercial Tax Officer [2014-VIL-23-RAJ]_
High Court, Ahmedabad

Certain powers exercised by the Director General of Foreign Trade (DGFT), in connection with the processing and grant of deemed export benefits, will be held as **ultra vires** and unconstitutional.

Foreign Trade Policy 2009-2014 (FTP) ; in favor of the assessee

The assessee was claiming “deemed export benefits” in respect of supplies to various power projects and filed a writ petition to challenge the legality and propriety of various powers exercised by the DGFT in connection with processing and grant of deemed export benefits. The assessee contended that Para 2.3 of the FTP, Para 8.3.6 of the Handbook of Procedures (HOP) and Para 7 of the ANF-8 Form are unconstitutional and **ultra vires** the Foreign Trade (Development and Regulation) (FTDR) Act, 1992 and the FTP. The assessee challenged Para 2.3 of the FTP, which provides that the interpretation by the DGFT of the provisions of the FTP and HOP will be final and binding. It also submitted that Para 8.3.6 of the HOP, which incorporates by reference the Duty Drawback Rules, was **ultra vires** the FTDR Act as the HOP is merely an administrative guidance and the DGFT did not have power to legislate either directly or by way of incorporation by reference. Para 7 of the ANF-8 Form was sought to be struck down as the FTDR Act or FTP did not grant power to the DGFT to re-determine or re-verify the deemed export benefits, once it was approved according to FTP provisions. Held, that the interpretation given by DGFT will have a binding effect in the absence of any existing interpretation by the HCs or the SC. However, the interpretation will not be binding on the HCs and the SC while making judicial review. The Court further held that, Para 8.3.6 of the HOP, vide which the Duty Drawback Rules were adopted, was **ultra vires** the FTDR Act as such power was not conferred upon the DGFT by the said Act. It was also held that Para 7 of the ANF-8 Form read with the provisions of the FTP cannot lawfully confer any power upon the DGFT to recall any adjudication by taking aid of such declaration attached with ANF-8 Form.

Alstom India Ltd. vs. Union of India & Anr. [2014-TIOL-223-HC-AHM-EXIM]
Central Excise

Amendment of Rule 7 of the CENVAT Credit Rules, 2004 relating to distribution of credit by Input Service Distributor

Rule 7 of the CENVAT Credit Rules, 2004 relating to distribution of credit by Input Service Distributor has been amended vide notification 5/2014 - CE (NT). The amendments will be effective from 1 April 2014.

Vide the amendment, service tax attributable to service used by one or more units exclusively engaged in the manufacture of exempted goods or rendition of exempted service would be barred from distribution. Moreover, credit attributable to a service used wholly by a unit would be distributed only to that unit. Pro rata distribution would be on the basis of the turnover of units using the service during the relevant period to the total turnover of all its units operational in the current year, during the relevant period. The definition of relevant period has also been substituted vide this notification.

Notification 5/2014-CE (NT) dated 24 February 2014

Recession of Notifications No. 17/2013 (Central Excise-NT) and 18/2013 (Central Excise-NT) dated 31 December 2013

The GoI has rescinded Notification Nos. 17/2013 (Central Excise-NT) and 18/2013 (Central Excise-NT) dated 31 December 2013, which amended the Central Excise Rules, 2002 and the CENVAT Credit Rules, 2004, respectively. These notifications required importers reselling imported goods and issuing invoices against which CENVAT credit can be taken, to mandatorily obtain Central Excise registration as “first stage dealers.” These notifications were earlier notified pursuant to the suggestions received from the Forum led by Dr. Parthasarathi Shome.

Notification Nos. 6/2014 - CE (NT) and 7/2014 - CE (NT) dated 26 February 2014

Mandatory registration for importers issuing CENVATable invoices, with the Central Excise authorities

The GoI has issued a notification, which requires importers who issue an invoice against which CENVAT credit can be taken, to get mandatorily registered with the Central Excise authorities. The amendment shall come into effect from 1 April 2014.

Notification No. 8/2014 - CE (NT) dated 28 February 2014

Registered importers required to file quarterly returns

Registered importers, who issue invoices against which CENVAT credit can be taken, are required to file quarterly returns electronically, in the prescribed form, within 15 days from the close of each quarter of a year to the Superintendent of Central Excise. The amendment shall come into effect from 1 April 2014.

Notification No. 9/2014 - CE (NT) dated 28 February 2014

Amendment of Annexure-I of Form A-1 for Central Excise registration and prescription of quarterly return form for first stage/second stage dealers and registered importers

The GoI has issued Notification No. 10/2014 - CE (NT) to amend Annexure-I of Form A-1, for the application of registration under the Central Excise law. Vide this amendment, “importers” are specifically included under Part I, for identification of business requiring registration and also as a separate category under Serial no. 3.

Notification no. 11/2014 - CE (NT) prescribes the revised quarterly return form for first stage/second stage dealers or registered importers.

These notifications will come into force with effect from 1 April 2014.

Notification Nos. 10/2014 - CE (NT) and 11/2014 - CE (NT) dated 28 February 2014

Foreign Trade Policy

Extension of time for installation of capital goods imported under Export Promotion Capital Goods (EPCG) Scheme

The DGFT has issued a public notice granting extension of time for installation of capital goods imported under the EPCG license and thereby amends Para 5.3.1(a) of the HOP.

The Public Notice grants an extension of time for installation of goods up to maximum period of 18 months from the date of completion of import under the EPCG license. The power of extension in time for installation of capital goods has been delegated to regional authorities.


The existing Foreign Trade Policy 2009-14 (RE-2013) was to remain in force until 31 March 2014. To provide continuity in policy environment, this is being extended beyond 31 March 2014, until further orders.

Notification No. 69/(RE-2013)/2009-2014 dated 19 February 2014

Amendment in Chapter 5 of the FTP

Amendments have been made in Para 5.5.1 (b) of the FTP, to allow additional 3 years for fulfilment of Export Obligation (EO) to EPCG authorization holders, if such holder receives relief under Corporate Debt Restructuring (CDR) mechanism.

Such extension will be granted from the date of approval of the CDR mechanism/scheme. It will not attract composition fee and will be in addition to granting of EO extension, if any, available under Para 5.11 of HOP.

Notification No. 70 (RE-2013)/2009-2014 dated 20 February 2014.

Amendment of the definition of “Group Company” in Para 9.28 of FTP

The DGFT has issued a notification to amend Para 9.28 of the FTP, to include limited liability partnership (LLPs) in the definition of “Group Company.” However, neither a partnership firm nor a proprietorship firm would come within the ambit of the said definition.

Notification No. 58 (RE-2013)/2009-2014 dated 18 December 2013

Customs

Allows amendment import/export documents by Additional or Joint Commissioner of Customs after grant of order of clearance of goods

Notification no. 12/2014-Customs (NT) dated 17 February 2014 amends Notification no. 40/2012-Customs (NT). It authorizes the Additional or Joint Commissioner of Customs to amend import/export documents after grant of order for clearance of imported goods for home consumption or clearance for exportation and Deputy/Assistant Commissioner of Customs and Central Excise can amend documents only before grant of order for such clearance.

Notification No. 12/2014-Customs (NT) dated 17 February 2014

VAT

Maharashtra

Change in procedure for submission of application for Central Sales Tax (CST) E-declaration

The Commissioner of Sales Tax has issued a circular regarding the filing of an application to obtain CST e-declarations/certificates electronically. The Circular would come into effect from 1 February 2014 and replace the existing system of the statutory declarations/forms sent through post physically by Maharashtra VAT authorities. The new procedure for issuance of declaration is available online for the period from 1 April 2008 onwards. The online application, i.e., Statement of Requisition (SOR) should be filed by the dealer according to the revised format, which would be available on the Maharashtra Government Website.

Trade Circular No.4T of 2014 dated 28 January 2014

Notification to amend Rule 58 of the Maharashtra Value Added Tax (MVAT) Rules, 2005

The Maharashtra Government has issued a notification to amend Rule 58 of the MVAT Rules, 2005, consequent to SC’s ruling in the case of L&T on levy of VAT on pre-construction sale of property. The amendments are deemed to be in force with effect from 20 June 2006.

Vide this amendment, an additional deduction is retrospectively permitted based on the stage of completion of the building, at the time of entering into contract with the buyer.

The value of land is to be deducted from the contract value before applying the specified standard deductions. If it can be proved that the actual value of land was higher than the value determined as per guidelines issued under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, the actual amount paid for purchase of land would be available as a deduction by way of a refund.

MVAT Notification No. 1513/ CR-147/ Taxation-1 dated 29 January 2014
Extension of due date of filing revised return for developers to 30 April 2014

Consequent to amendment of Rules 58(1) and 58(1A) of the MVAT Rules, 2005 in view of the SC's ruling in the case of L&T, developers are required to file revised returns for the period 20 June 2006 to 31 December 2013. Such revised returns can be filed by 30 April 2014.

Developers are required to discharge their tax liability by selecting any one option among four options available under the MVAT Act.

No other option, (such as Cost plus Gross profit method) apart from those statutorily prescribed under the MVAT Act, would be admissible.

Trade Circular No 7T of 2014 dated 21 February 2014

Delhi

Withdrawal of the filing of Audit Report in its current format AR-1

The Commissioner of Value Added Tax has issued a notification to withdraw the filing of Audit Report in its current format AR-1, with immediate effect.

Notification No.F.3 (384)/Policy/VAT/2013/1307-1319 dated 14 February 2014

Details of Invoice and Goods Receipt Note for goods procured from outside Delhi, to be submitted online by dealers in Form T-2.

The Delhi Government has re-introduced the mechanism for submission of details of Invoice and Goods Receipt Note in respect of all goods purchased or received as stock transfer or received on consignment agreement from outside Delhi, before the goods physically enter the boundary of Delhi. The details are required to be submitted online in Form T-2.

It is required to be submitted by all dealers, except dealers exclusively dealing in tax-free goods, with gross turnover of more than or equal to INR1 crore or on any date in the current financial year on which the dealer attains the lower limit of gross turnover of INR1 crore.

The Notification will come into force with effect from 15 March 2014 (the portal would be open for trial run by dealers from 7 March 2014).

Notification No. F.7(433)/Policy-II/VAT/2012/1332-1342 Dated 28th February, 2014

Punjab

Rate of tax on Single Point Taxation on certain commodities enhanced

The State Government has issued a notification to enhance the rate of tax on Single Point Taxation on certain commodities from 5.5% to 6.25% and to amend Schedule A, B and E.

Issue of Press Note 1 2014

The Department of Industrial Policy and Promotion (DIPP) has issued Press Note No. 1 of 2014 conveying the GoI’s decision to continue with the policy of allowing 100% foreign investment in existing pharmaceutical firms. The existing policy on pharmaceutical would continue with the condition that “non-compete” clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.

DIPP Press Note No. 1 of 2014 dated 8 January 2014

FEMA 1999: clarification on provisions under Section 6(4)

The RBI has clarified the object of the provisions of Section 6(4) that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when the person was a resident outside India or inherited from a person who was resident outside India.

Subject to the other transactions mentioned in the Circular issued, such persons resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without the RBI’s approval, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

Foreign investment in India: participation by SEBI registered FIIs, QFIs and SEBI registered long-term investors in credit enhanced bonds

The RBI has decided to allow Securities and Exchange Board of India (SEBI) registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and Sovereign Wealth Funds (SWFs), multilateral agencies, Pension/Insurance/Endowment Funds, foreign Central Banks, to invest in the credit enhanced bonds up to a limit of US$5 billion within the overall limit of US$51 billion earmarked for corporate debt.

Further to encourage long-term investors, the RBI has decided to reduce the existing Commercial Paper sub-limit of US$3.5 billion to US$2 billion. The balance US$1.5 billion shall, however, continue to be part of the total corporate debt limit of US$51 billion and will be available to eligible foreign investors for investment in corporate debt.


Issue of American Depository Receipt (ADR)/Global Depository Receipt (GDR) by unlisted companies

The RBI has issued a circular notifying conditions for the unlisted Indian companies to raise capital abroad without prior or subsequent listing in India, initially for a period of two years.

The funds raised abroad may be utilized for retiring outstanding overseas debt or for operations abroad including acquisitions and if the funds are not utilized for such purposes the amount shall be repatriated within 15 days to India and parked with Authorized Dealer (AD) bank.

The RBI has further decided to permit resident entities/companies in India, authorized by the GoI, to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India to use such borrowed funds for the following purposes:

(a) for lending/re-lending to the infrastructure sector; and
(b) for keeping in FDs with banks in India pending utilization by them for permissible end-uses.


Issue of non-convertible/redeemable bonus preference shares or debentures

The RBI has allowed Indian companies to issue non-convertible/redeemable preference shares or debentures to NR shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no objection from the Tax Authority.


Foreign Direct Investment (FDI): pricing guidelines for FDI instruments with optionality clauses

The RBI has issued a notification FEMA 294/RB wherein it has specified certain amendments with respect to the put/call options.

Addition to Clause 5 (1) (i)

“..shares or convertible debentures containing an optionality clause but without any option/right to exit at an assured price shall be reckoned as eligible instruments to be issued to a person resident outside India by an Indian company...”.

Addition to Clause 9 (1)

“... subject to minimum lock-in period of one year or minimum lock-in period as prescribed under” (the FDI Policy eg. Real Estate) “...whichever is higher, a person resident outside India holding the shares or debentures of an Indian company containing an optionality clause in accordance with these Regulations and exercising the option/right, may exit without any assured return, subject to the following conditions:

1. In case of listed company, at the market price determined on the floor of the recognised stock exchanges;
2. In case of equity shares of unlisted company, at a price not exceeding that arrived on the basis of Return on Equity (RoE) as per latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy.
3. In case of Preference shares or debentures, at a price worked out as per any internationally accepted pricing

Explanation - RoE shall mean Profit After Tax / Net Worth; Net worth would include all free reserves and paid up capital.
methodology at the time of exit, duly certified by a
Chartered Accountant or a SEBI registered Merchant
Banker. The guiding principle would be that the
non-resident investor is not guaranteed any assured
exit price at the time of making such investment/
agreements and shall exit at the price prevailing at the
time of exit, subject to lock-in period requirement."

With these additions to the FEMA regulations, the RBI
has made an effort to permit the put/call option in a
regularized manner.

2014

Third-party payments for export/import transactions

The RBI has liberalized the procedure relating to payment
of export and import, taking into account the evolving
international trade practices.

With respect to payments for export of goods/software,
AD banks may now allow payment to be received from
third party subject to certain conditions including a firm
irrevocable order backed by a tripartite agreement and the
exporter should mention the third party remittance in the
Export Declaration Form (EDF).

In relation to import of goods, among the other conditions,
it shall be required to provide in the narration of the invoice
that the related payment has to be made to the third party
whose name is also provided in the invoice.

The aforesaid “irrevocable order backed by a tripartite
agreement” may not be insisted in case where
documentary evidence for circumstances leading to third
party payments/name of the third party being mentioned
in the irrevocable order/invoice has been produced is
satisfactory to the AD bank and the AD bank will also
consider the Financial Action Task Force (FATF) statements
while handling such transaction.

RBI/2013-2014/364 A. P. (DIR Series) Circular No.70 dated 8 November
2013

RBI/2013-2014/479 A. P. (DIR Series) Circular No.100 dated 4 February
2014

Revised guidelines for merchanting trade
transactions

The RBI has amended guidelines for merchanting trade
whereby, among other conditions, it is specified that the
entire merchanting or intermediary trade transactions
should be completed within an overall period of nine
months and there should not be any outlay of foreign
exchange beyond four months. Previously the entire
transaction was required to be completed in six months.

2014

External Commercial Borrowings (ECB) by holding
companies/CICs for the project use in SPVs

The RBI has permitted holding companies/core investment
companies (CICs) to raise ECBs for use in special purpose
vehicles (SPVs), subject to terms and conditions.

Inter-alia, the RBI has specified that the business activity
of the SPV should be in the infrastructure sector; and the
infrastructure project is required to be implemented by the
SPV established exclusively for implementing the project.

Furthermore, the ECB proceeds should be utilized either
for fresh capital expenditure or for refinancing of existing
rupee loans (under the approval route) taken from the
domestic banking system for capital expenditure.

ECB for the SPV can be raised up to three years after the
commercial operations date of the SPV.

The SPV should give an undertaking that no other method
of funding, such as trade credit (if for import of capital
goods), will be utilized for that portion of fresh capital
expenditure financed through ECB proceeds.

In the case of holding companies that come under the
RBI’s CIC regulatory framework, additional conditions have
been specified. The CICs need to ensure that their outside
liabilities including ECB cannot be more than 2.5 times of
their adjusted net worth as on the date of the last audited
balance sheet and in case of CICs with asset size below
INR100 crore, the ECB availed of should be on fully hedged
basis.

RBI/2013-2014/397 A.P.(DIR Series) Circular No. 78 dated 3 December
2013

External Commercial Borrowings (ECB) Policy:
liberalization of definition of infrastructure sector

The RBI has decided that, for the purpose of ECB, the
definition of infrastructure should be enhanced to also
include “Maintenance, Repairs and Overhaul” (MRO) as a
part of airport infrastructure.

2014
Overseas Direct Investment (ODI): rollover of guarantees

The RBI has decided not to treat/reckon the renewal/rollover of an existing/original guarantee, which is part of the total financial commitment of the Indian party, as a fresh financial commitment, subject to certain conditions. However, if the aforesaid conditions are not met, the Indian party shall obtain prior approval of the RBI for rollover/renewal of the existing guarantee through the designated AD bank.


Clarification regarding establishment of LO/BO/PO in India by Foreign Entities – general permission

The RBI has clarified that applications from entities registered in Hong Kong and Macau, for establishment of LO/branch office (BO)/project offices (PO) or any other place of business will require prior approval from the RBI.

Essentially this clarification has impact on the establishment of PO, which is under general permission. LO and BO already require prior approval from the RBI and only the processing time may be increased.

The SEBI has notified new foreign portfolio investor (FPI) regulations, which replaces the existing regulations for FIIls and the new class of investors, FPIs, would encompass all FIIs, their sub-accounts and QFIls. They would need to apply for registration through Designated Depository Participants (DDPs), subject to compliance with know your client (KYC) norms.

The KYC requirements and other registration procedures as provided in the regulations are simpler for FPIs compared with the current practices.

Under the new norms, FPIs have been divided into three categories according to their risk profile.

The Category I FPIs, which would be the lowest risk entities, would include foreign governments and government-related foreign investors. There shall not be any fee charged for such investors.

The Category II FPIs would include (i) appropriately regulated broad-based funds, (ii) appropriately regulated entities and broad-based funds, whose investment manager is appropriately regulated, (iii) university funds, (iv) university-related endowments and (v) pension funds. There is a fee for US$3000 to be paid by such investors.

The Category III FPIs would include all others not eligible under the first two categories and a fee of US$300 shall be payable by such investors. The SEBI said all existing FIls and sub-accounts may continue to buy, sell or otherwise deal in securities under the FPI regime.

All existing QFIls can continue to buy, sell or otherwise deal in securities till the period of one year from the date of notification of this regulation. In the meantime, they may obtain FPI registration through DDPs.

The regulations provides that Category I and Category II FPIs will be allowed to issue, or otherwise deal in offshore derivative instruments (ODIs).

Moreover, fees of US$1000 would be paid by the existing FIls, sub-accounts and QFIls to obtain registration certificate to act as an FPI. However, no fee will be charged by the SEBI from multilateral agency such as the World Bank and other institutions, established outside India for providing aid, which have been granted privileges and immunities from payment of tax and duties by the GoI to obtain registration certificate to act as an FPI.

FPIs will be allowed to invest in securities in the primary and secondary markets. These would include unit of schemes floated by domestic mutual funds, treasury bills, dated government securities, equity derivatives, commercial papers, and Indian depository receipts, among others.

SEBI Notification No. LAD-NRO/GN/2013-14/36/12 dated 7 January 2014
Click on the links provided below to access some of our recently published articles.

**Give foreign investors legitimate tax benefits**  
Sudhir Kapadia, *The Economic Times*

**Withhold TDS when purchasing property from builder**  
Pramod Achuthan, *Business Standard*

**Playing Santa to employees**  
Alok Agrawal, *The Hindu Business Line*

**A tax reality check for new home buyers**  
Amarpal Chadha, *The Hindu Business Line*

**Bounty in share capital deals?**  
Vijay Iyer, *The Hindu Business Line*

**New Cos Act to bring clarity on tax issues**  
Chaitali Bhatawdekar, *The Financial Express*

**Some services of subcontractors can qualify as input services**  
Amit Bhagat and Jayanta Kalita, *The Financial Express*

**For a less taxing experience, keep tabs on processes**  
Chaitali Bhatawdekar, *The Financial Express*

**M&A’s need a smooth tax ride in the new year**  
Amrish Shah and Mehul Bheda, *The Hindu Business Line*

**Leaving tax at home?**  
D.K. Srivastava, *The Hindu Business Line*

**Building trust in infrastructure funding vehicles**  
Maadhav Poddar, *The Hindu Business Line*

**Direct taxes and GST: The unfulfilled promises**  
Satya Poddar and Shalini Mathur, *Business Standard*

**A backward-looking Interim Budget**  
Dr. DK Srivastava, *The Indian Express*

**Tackling tax evasion, simplifying compliance sum up last decade**  
Mayur Shah and Chaitali Bhatawdekar, *The Financial Express*

**CBDT puts on hold changes in application process for PAN**  
Aditya Modani, *The Financial Express*

**Missed sending ITR-V to claim refund? Last call**  
Alok Agrawal, *The Financial Express*
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Title</th>
<th>Date of the alert</th>
<th>Citation/Notification/Circular</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Cochin ITAT rules export commission as technical service fee</td>
<td>9 December 2013</td>
<td>ITO v. Device Driven (India) Pvt. Ltd. [TS-613-ITAT-2013(COCH)]</td>
</tr>
<tr>
<td>2.</td>
<td>Expenditure on acquiring master copies of software used for duplication and licensing is revenue in nature</td>
<td>10 December 2013</td>
<td>Oracle India Pvt. Ltd. v. CIT [TS-598-HC-2013(DEL)]</td>
</tr>
<tr>
<td>3.</td>
<td>Karnataka High Court rules software development expenditure is scientific research</td>
<td>3 January 2014</td>
<td>CIT v. Talisma Corporation Pvt. Ltd. [TS-654-HC-2013(KAR)]</td>
</tr>
<tr>
<td>4.</td>
<td>CBDT relaxes withholding on service tax component on payments to residents</td>
<td>17 January 2014</td>
<td>CBDT Circular No. 1/2014 dated 13 January 2014</td>
</tr>
<tr>
<td>5.</td>
<td>Delhi Tribunal rules on whether sales promotion activity of Liaison Office is taxable in India</td>
<td>20 January 2014</td>
<td>Brown &amp; Sharpe Inc. v. ACIT [TS-15-ITAT-2014(DEL)]</td>
</tr>
<tr>
<td>6.</td>
<td>HC ruling on deductibility of &quot;secret commission&quot; and free specimen distribution</td>
<td>24 January 2014</td>
<td>[TS-23-HC-2014(P_and_H)] CIT v. Dhanpat Rai &amp; Sons</td>
</tr>
<tr>
<td>7.</td>
<td>India's Delhi Tribunal rules on application of Profit Split Method</td>
<td>30 January 2014</td>
<td>ITO v. Net Freight (India) P. Ltd. [TS-363-ITAT-2013(DEL)]</td>
</tr>
<tr>
<td>8.</td>
<td>Kolkata Tribunal rules discounting charges not in the nature of interest</td>
<td>30 January 2014</td>
<td>ITO v. MKJ Enterprises Ltd. [TS-36-ITAT-2014(Kol)]</td>
</tr>
<tr>
<td>9.</td>
<td>OECD releases discussion draft on TP documentation country-by-country reporting template</td>
<td>31 January 2014</td>
<td>Draft of its proposed template for country-by-country reporting to tax authorities released by OECD on 30 January 2014 in its &quot;Discussion Draft on Transfer Pricing Documentation and CbC Reporting&quot;</td>
</tr>
<tr>
<td>10.</td>
<td>Supreme Court upholds initiation of prosecution for failure to file return</td>
<td>3 February 2014</td>
<td>Sasi Enterprises v. ACIT [TS-43-SC-2014]</td>
</tr>
<tr>
<td>11.</td>
<td>Delhi HC rules that outsourcing of services by a US company to its Indian affiliate does not constitute a PE</td>
<td>10 February 2014</td>
<td>DIT v. E Funds IT Solution [TS-63-HC-2014(DEL)]</td>
</tr>
<tr>
<td>13.</td>
<td>CBDT clarifies disallowance of expenditure relatable to exempt income warranted even when no exempt income is actually earned</td>
<td>17 February 2014</td>
<td>CBDT Circular No. 5/2014 dated 11 February 2014</td>
</tr>
<tr>
<td>14.</td>
<td>AAR on constitution of a permanent establishment on provision of technical personnel to an Indian affiliate</td>
<td>21 February 2014</td>
<td>Booz &amp; Company (Australia) Pvt. Ltd. and others [TS-76-AAR-2014]</td>
</tr>
<tr>
<td>S. No.</td>
<td>Title</td>
<td>Date of the alert</td>
<td>Citation/Notification/Circular</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Central Excise &amp; CENVAT Credit rules amended to mandate ‘first stage dealer’ registration for importers re-selling imported goods against CENVATable invoices</td>
<td>3 January 2014</td>
<td>Ministry of Finance Notifications no. 17/2013-Central Excise (N.T.) and 18/2013-Central Excise (N.T.) dated 31 December 2013</td>
</tr>
<tr>
<td>2</td>
<td>Amendment in CENVAT Credit Rules, 2004, requiring reversal of CENVAT credit on input services used in the manufacture of goods, on which duty has been remitted</td>
<td>10 January 2014</td>
<td>Ministry of Finance Notification No. 1/2014-Central Excise (N.T.) dated 8 January 2014</td>
</tr>
<tr>
<td>3</td>
<td>CBEC circular with respect to the implementation of the decision in Fiat case</td>
<td>16 January 2014</td>
<td>CBEC Circular No. 979/03/2014-CX dated 15 January 2014</td>
</tr>
<tr>
<td>S. No.</td>
<td>Title</td>
<td>Date of the alert</td>
<td>Citation/Notification/Circular</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------------------------------------------------------</td>
<td>-------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>1.</td>
<td>Put and call options</td>
<td>8 January 2014</td>
<td>RBI Notification with respect to put and call options associated with the Equity Shares and Compulsorily Convertible Debentures</td>
</tr>
<tr>
<td>2.</td>
<td>Securities and Exchange Board of India notifies regulations to ease and rationalize Foreign Portfolio Investments</td>
<td>14 January 2014</td>
<td>SEBI Notification No. LAD-NRO/GN/2013-14/36/12 dated 7 January 2014 notifying the SEBI (Foreign Portfolio Investors) Regulations, 2014 SEBI Circular No. CIR/IMD/FIIC/02/2014 dated 8 January 2014 issuing operating guidelines for Designated Depository Participants</td>
</tr>
<tr>
<td>4.</td>
<td>MCA circular instructing RDs to obtain specific comments from IT dept. &amp; other sectorial regulators while responding u/s 394 of Companies Act</td>
<td>27 January 2014</td>
<td>MCA General Circular No. 1/2014 issued on 15 January 2014</td>
</tr>
</tbody>
</table>
Our offices

Ahmedabad
2nd floor, Shivalik Ishaan
Near C.N Vidhyalaya
Ambawadi,
Ahmedabad-380015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
6th, 12th & 13th floor
“U B City”- Canberra Block
No.24, Vittal Malleya Road
Bengaluru-560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)
1st Floor, Prestige Emerald
No.4, Madras Bank Road
Lavelle Road Junction
Bengaluru-560 001
Tel: +91 80 6727 5000
Fax: +91 80 2222 4112

Chandigarh
1st Floor, SCO: 166-167
Sector 9-C, Madhavy Marg
Chandigarh-160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidel Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi
Salai
Taramani,
Chennai-600113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Hyderabad
Oval Office, 18, iLabs Centre
Hitech City, Madhapur
Hyderabad - 500081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Kochi
9th Floor “ABAD Nucleus”
NH-49, Maradu PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camac Street
3rd Floor, Block C”
Kolkata-700 016
Tel: +91 33 6615 3400
Fax: +91 33 6281 7750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai-400 028, India
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000
5th Floor Block B-2
Nirion Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai-400 063, India
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

NCR
Golf View Corporate
Tower - B, Near DLF Golf Course
Sector 42
Gurgaon-122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

6th floor, HT House
1B-20 Kasturba Gandhi Marg
New Delhi-110 001
Tel: +91 11 4363 3000
Fax: +91 11 4363 3200
4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA-201 304
Gautam Budh Nagar, U.P. India
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Pune
C-401, 4th floor
Panchshil Tech Park
Yerwada (Near Don Bosco School)
Pune-411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

Ernst & Young LLP
EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/in.

© 2014 Ernst & Young LLP. Published in India.
All Rights Reserved.
EYIN4-403-026
ED None

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

RS