Dear readers,

We are pleased to release the June 2013 edition of Ernst & Young’s Tax & Regulatory Quarter — a quarterly e-newsletter that summarizes significant ongoing tax and regulatory developments.

This newsletter covers landmark judgments and update on tax treaties. The “In the press” and “What’s new” sections provide links to thought leadership and published articles on various issues in the tax realm and other topics that you may be interested in. This newsletter also includes a compilation of tax alerts released by Ernst & Young India during the quarter.

We hope you find this edition both timely and useful.

Best regards,
Ernst & Young Tax Update team
Reported decisions supported by our Litigation team

Income from offshore services though taxable under ITA, was not so under DTAA

The Taxpayer, in the case of IHI Corporation v. ADIT [ITA No. 7227/Mum/2012], a Japanese Company, did not offer income received from offshore services by claiming that it did not accrue or arise in India. The Tax Authority subsequently considered it as fees for technical services (FTS) under the India-Japan Double Taxation Avoidance Agreement (DTAA). The Tribunal held that the income from offshore services, albeit chargeable under the Income Tax Act (ITA), was not so under the DTAA. This was based on the decision of a higher court in the Taxpayer's own case for an earlier tax year. Hence, it cannot be taxed under the provisions of the DTAA.

Hypothetical tax allowed as a deduction from taxable income of foreign employee

The Mumbai Tribunal, in the case of DCIT v. Shri Bikram Sen (Taxpayer) [ITA No. 810/Mum/2012], was concerned with the allowability of hypothetical tax (hypo-tax) as a deduction from taxable income of the Taxpayer. Under the Tax Equalization Policy (TEQ) framed by his employer, the tax liability arising to the Taxpayer on account of the foreign assignment was to be borne by the employer. The Tribunal held that the hypo-tax, which is part of his total tax liability, which he would have paid had he continued working in the US, is not taxable in India. The Tribunal, relying on the decision of the jurisdictional High Court (HC) in the case of Jaydev H. Raja [(2012) 211 Taxman 188 (Bom)] directed the Tax Authority to restrict the perquisite only to the extent of additional tax liability (i.e., Tax paid by employer after reducing the hypo-tax paid by the employee).

ESOP perquisite to be proportionately restricted to India job duration

In another case [ACIT v. Robert Arthur Keltz (Taxpayer) (ITA No. 3452/Del/2011)], the Delhi Tribunal, placing reliance on jurisdictional HC’s decision in the case of Dr. Percy Batilvada [(2010-TIOL-175-HC-DEL-IT)] wherein the HC had held that the hypo-tax retained by the employer was not liable to be added to income of employee, ruled in favor of the Taxpayer.

[Please refer Ernst & Young Tax and Regulatory Focus, May 2010 edition for Delhi HC’s decision in the case of CIT v. Dr. Percy Batilvada]

Illustrative examples of non-taxable capital receipts

Compensation received for loss of referral work, business transfer

The Delhi HC, in the case of Khanna and Annadhanam (Taxpayer) v. CIT [ITA No. 1286 /2008] ruled on whether compensation received by a chartered accountant firm on losing referral work from another chartered accountant firm is a capital receipt. The HC observed that the arrangement had acquired a kind of permanency as a source of income and when that source was unexpectedly terminated, it amounted to impairment of a profit-making apparatus of the Taxpayer. Accordingly, the compensation is a substitute for the source and, hence, is a non-taxable capital receipt.
The Mumbai Tribunal, in the case of IGFT Ltd. (Taxpayer) v. ITO [TS-198-ITAT-2013(Mum)], held that the consideration received for transfer of its merchant banking business, is capital in nature. Further, in the absence of cost of acquisition for the assets, it could not be taxed as capital gains. Since, there was no transfer of an undertaking, the transfer did not amount to a slump sale.

However, in the case of RFCL Ltd. (Taxpayer) v. DCIT [TS-122-ITAT-2013(Chandi)], the Taxpayer was exploring a possibility of acquiring control in a company in order to expand its business. A share purchase agreement (SPA) was entered with a prospective seller, but the deal did not go through. The compensation received for such failed transaction from the seller was not offered to tax, considering it to be a capital receipt. The Tribunal ruled that the compensation received was in the course of carrying on its normal line of business and there was no loss of source of business income. Hence, the compensation received was taxable as a revenue receipt.

**A GoI grant-in-aid for telecom research**

The Taxpayer, in the case of CIT v. India Telephone Industries Ltd. [TS-152-HC-2013(Kar)], was a Government of India (GoI) undertaking, engaged in the business of manufacturing telephones and its components. The Taxpayer received a grant-in-aid from the GoI to carry out research in the telecommunication field, which it considered as a non-taxable capital receipt. The Karnataka HC, referring to the Supreme Court (SC) ruling in the case of CIT v. Ponni Sugars & Chemicals Ltd. & Ors [(2008) 306 ITR 392], held that the grant for research, which would benefit the nation and public at large, was given with the objective of improving existing telecommunication system, not for running day-to-day business. Therefore, it is a non-taxable capital receipt for the Taxpayer.

**Consideration received for voting in a specified manner**

The Taxpayer, in the case of Carnival Investments Ltd. v. ITO [TS-176-ITAT-2013(Kol)], held 50% shareholding in an Indian Company (IndCo), the rest of which was held by a US Company (FCo). FCo negotiated a settlement with the Taxpayer, according to which the Taxpayer was to exercise its voting rights in a particular manner. For this purpose, the Taxpayer received a consideration, which it treated as a non-taxable capital receipt. The Bombay HC in the case of CIT v. David Lopes Menezes [195 Taxman 131 (Bom)] had held that the money received for voting affirmatively and supporting the resolution was not a business receipt, but a bounty or windfall, as voting on the resolutions in a particular manner was not a business of the income-recipients. The Tribunal, relying on the Bombay HC’s decision, ruled in favor of the Taxpayer.

**Forfeiture of share application money**

The Mumbai Tribunal, in the case of Morarjee Textiles Ltd. (Taxpayer) v. ACIT [TS-193-ITAT-(Mum)], ruled on taxability of forfeiture of share application money. The Tribunal upheld the First Appellate Authority’s decision that the share application money was a capital receipt when it was received and, consequently, its forfeiture to restructure the capital of the company was not taxable.

**DTAA rates not to be enhanced with surcharge and cess**

The Mumbai Tribunal, in the case of Sunil V. Motiani (Taxpayer) v. ITO [TS-117-ITAT-2013(Mum)], ruled that the interest rate of 12.5%, under a DTAA, will not be further enhanced by surcharge and education cess, as the term “Income Tax” has been defined in Article 2 of the DTAA to include surcharge and education cess in the nature of surcharge. Therefore, education cess and surcharge can be regarded as included in the prescribed DTAA rate of 12.5%.

In another instance, the Cochin Tribunal, in the case of ITO v. M Far Hotels Ltd. (Payer) [TS-133-ITAT-2013(Coch)], ruled that where the DTAA does not talk about the surcharge and education cess, the Payer was not required to enhance the DTAA rate with surcharge and education cess while withholding taxes on management fees, interest etc. paid to a nonresident (NR).
Deductibility of cancellation loss on forward exchange contracts

Apart from the Bombay and Calcutta HC decisions, the Gujarat HC has held that the loss incurred on cancellation of forward exchange contracts were deductible because the taxpayers were not dealers in foreign exchange but had entered forward contracts for hedging purposes. Therefore, it was not held to be a speculative transaction.

However, the Mumbai Tribunal, in the case of S. Vinodkumar Diamonds Pvt. Ltd. (Taxpayer) v. ACIT [(ITA No. 506/Mum/2013) dated 3 May 2013], took a different view on the issue and held that the transaction was speculative. The Tribunal referred to the definition of “speculative transaction” under the ITA, i.e., a contract for purchase or sale of any commodity, which is settled otherwise than by actual delivery. It noted that the exclusion to the definition applies to a contract in respect of raw material or merchandise entered by manufacturer or merchant to guard against loss through future price fluctuations in respect of contracts for actual delivery of goods manufactured or merchandise sold by him. The Tribunal held that the exclusion applied only if the underlying contracts and hedging contracts are for the same commodity. In the Taxpayer’s case, the underlying export contracts were for diamonds whereas forward contracts were for foreign exchange. Accordingly, it held that the forward contract transactions were speculative in nature.

Tribunal rulings on allowability of depreciation on intangible assets

Toll collection right

The Taxpayer, in the case of ACIT v. Ashoka Infraways (Taxpayer) [TS-171-ITAT-2013(Pun)], was required to build and maintain infrastructure facility (roads) on behalf of the Madhya Pradesh Government (MPG) at its own cost on Build, Operate and Transfer (BOT) basis and transfer it to MPG at the end of the period, free of cost. In return, the Taxpayer was bestowed with the “right to collect toll” from the motorists using the road during a specified period. The Taxpayer capitalized the costs incurred to develop and construct the road under the head “License to collect toll.” The Tribunal, on observing that the “right to collect toll” had emerged after incurring costs through its own resources and the requirement of the intangible asset to be used wholly or partly for the purpose of business being fulfilled, allowed the claim of depreciation on such rights as intangible asset.

Acquired bundle of business rights

The Chandigarh Tribunal, in the case of RFCL Ltd. (Taxpayer) v. DCIT [TS-122-ITAT-2013(Chandi)] ruled on the depreciation allowability on bundle of business rights comprising licenses, permissions, health registrations, manufacturing know-how, distribution network, information and documentation in relation to products etc., (recognized in books of accounts as “goodwill”) that were acquired by the Taxpayer pursuant to a Business Purchase Agreement. The Tribunal observed that the aforementioned bundle of rights were similar to a license and constituted “business or commercial rights,” which are in the nature of intangible assets and, thereby, allowed the claim for depreciation.

Distribution rights

The Taxpayer, in the case of ITO v. Virbac Animal Health India P. Ltd. (Taxpayer) [TS-134-ITAT-2013(Mum)], claimed depreciation on distribution rights, trademarks, technical know-how and goodwill. The Tribunal also allowed depreciation on goodwill and trademark rights.

Disallowable for withholding tax default includes expenses “paid” during the year

(ia) (Section) does not apply to withholding tax defaults where the amounts are actually “paid” during the tax year without deducting tax.

Now, reversing the SB ruling, the Gujarat HC, in the case of CIT v. Sikandarkhan N Tunvar [TS-186-HC-2013(Guj)], and the Calcutta HC, in the cases of CIT v. Crescent Export Syndicate [TS-199-HC-2013(Cal)] and CIT v. Md. Jakir Hossain Mondal [ITAT No. 31 of 2013/ G.A. No.320 of 2013], ruled that provisions of the Section apply not only to the amounts, which remain payable on the last day of a tax year but even to amounts, which are paid during the tax year without deducting tax.

For more details (Sikandarkhan N Tunvar), please refer Ernst & Young Tax Alert dated 10 May 2013.

For more details (Merilyn Shipping) please refer Ernst & Young Tax Alert dated 17 April 2012.

Legal expenses incurred to facilitate exit of a JV partner not deductible

The Taxpayer, in the case of Gillette Group India Pvt. Ltd. (Taxpayer) v. DCIT [TS-128-ITAT-2013(DEL)], an Indian company, incurred expenses for taking legal opinion for divestment from a joint venture (JV) in India. Such divestment was a result of Taxpayer's NR parent company (FCo) exiting from a particular business division worldwide. FCo directly paid the non-compete fees to the Indian JV partner. The Delhi Tribunal observed that the facts such as, (i) the legal and related expenses were for the non-compete arrangement; (ii) the entire sale proceeds of the sale of division were retained by FCo; (iii) the rights held by the Indian JV partner, were a stumbling block in the transaction of the sale of division. Therefore, the Tribunal ruled that the legal expenses incurred by the Taxpayer were for and on behalf of FCo and could not be claimed as deduction in the Taxpayer's hands.

Tribunal rulings on permanent establishment

Delhi Tribunal on permanent establishment and profit attribution

The Delhi Tribunal, in the case of Convergys Customer Management Group Inc. (Taxpayer) [TS-187-ITAT-2013(DEL)], ruled on whether the Taxpayer, a foreign company, constituted a permanent establishment (PE) in India under the India-US DTAA and the appropriate methodology for attributing profits to such PE. The Tribunal found that the Taxpayer’s employees frequently visited the premises of its Indian subsidiary (ICo) and some of its seconded employees worked in key positions such as Country Head, Managing Director etc., of the ICo. Hence, the Tribunal held that, as such employees have a “fixed place” at their disposal and ICo was practically the projection of the Taxpayer's business in India, the Taxpayer had a fixed place PE in India. On attribution of profits to the PE, the Tribunal held that 15% of residual profits arrived at after reducing profits of ICo was reasonable and the Taxpayer was obliged to pay advance tax on such additionally attributed income.

For more details, please refer Ernst & Young Tax Alert dated 13 May 2013.

On creation of PE in India for a website, when servers are located outside India

The Kolkata Tribunal, in the case of Right Florists Pvt. Ltd. (Taxpayer) [TS-137-ITAT-2013(Kol)], while ruling on taxability of amounts paid to search engines such as Google and Yahoo for online advertising services by the Taxpayer, held that a website, per se, will not constitute a PE in India under the basic “Fixed Place PE” rule for the search engine companies. Reliance was placed on the Organisation for Economic Co-operation and Development (OECD) Model Commentary to conclude that a search engine, operating in India through its website, cannot have a PE in India under the DTAA unless its web servers are also located in India.

For more details, please refer Ernst & Young Tax Alert dated 18 April 2013.

Judiciary views on levy of penalty

No penalty where income was wrongly classified, not concealed

The Taxpayer, in the case of CIT v. Bennett Coleman & Co. Ltd. (Taxpayer) [ITA No. 2117 of 2012, dated 26 February 2013], inadvertently categorized certain Government bonds purchased during the relevant year as tax-free bonds and, consequently, taxes were not paid on interest earned on such bonds. The Tax Authority levied penalty
on the grounds of concealing and furnishing inaccurate particulars of income. The Bombay HC, upholding the Tribunal’s factual findings that there was no desire on the part of the Taxpayer to hide or conceal the income so as to avoid payment of tax on interest from the bonds, deleted the penalty.

**Employee not liable to penalty for employer’s mistake in salary statement**

The Rajkot Tribunal, in the case of Ms. Khushboo P. Shah (Taxpayer) v. DCIT [TS-125-ITAT-2013(Rjt)], ruled on levy of penalty in the hands of the Taxpayer for mistake made by the Taxpayer’s employer while issuing salary certificate (Form No 16). The Taxpayer had received certain allowances from her employer, which the employer considered to be exempt and issued Form No 16. The Tribunal held that for the mistake of the employer in not computing the correct income, the Taxpayer cannot be penalized.

**No penalty for wrong claim of depreciation**

The Pune Tribunal, in the case of Amruta Organics Pvt. Ltd. (Taxpayer) v. DCIT [TS-130-ITAT-2013(Pun)], ruled on levy of penalty for furnishing inaccurate particulars of income. The Taxpayer had made a wrong claim for depreciation in its Return of Income (RoI) and the Tax Authority levied penalty for such excessive claim of depreciation. The Tribunal ruled that mere mistake in making of a claim in RoI would not, *ipso facto*, reflect concealment or furnishing of inaccurate particulars of income. The wrong claim of depreciation cannot be said to have been made with an intention to evade taxes, since even after the disallowance of depreciation, the Taxpayer still incurs a loss.

**HC rulings of relevance to real estate companies**

**On set-up date of real estate business**

The Taxpayer, in the case of CIT v. Dhoomketu Builders & Development Pvt. Ltd. (Taxpayer) [TS-190-HC-2013(Del)], was incorporated to carry on the business of real estate development, including purchase and sale of land. During the relevant year, the Taxpayer participated and failed in a tender for acquiring land. The Tax Authority, held that as the Taxpayer was unsuccessful in acquiring the land, it had not “set-up” its business. The Delhi HC ruled that there is a difference between commencement of business and setting-up of the same. If the Taxpayer is in a position to commence business, it would mean that the business has been set up. The commencement of real estate business will normally start with the acquisition of land or immoveable property. However, when a taxpayer, whose business it is to develop real estates, is in a position to perform certain acts toward acquisition of land, that would clearly show that it is ready to commence business and, as a corollary, that it has already been set up.

**No adjustments on a presumption of suppressed prices in real estate market**

The Delhi HC, in the case of CIT v. Discovery Estates Pvt. Ltd. (Taxpayer) [TS-63-HC-2013(DEL)], accepted the Taxpayer’s reported sale price of shops and resultant loss thereto and denied the Tax Authority’s contention of making additions to suppressed sale price merely on the basis of suspicion and surmise or by considering the “notorious practice” prevailing in the real estate market. The HC held that, such points can be the basis for further enquiry and no enhancement can be made in the absence of other tangible evidence.

**Withholding tax applicability on reimbursement payments**

The Mumbai Tribunal, in the case of C. U. Inspections (I) Pvt. Ltd. [TS-132-ITAT-2013(Mum)] (Taxpayer), ruled on the taxability of payments made by the Taxpayer to its holding company (HoldCo) toward certain common expenses and training expenses incurred on behalf of the Taxpayer. The Tribunal held that the payments toward common expenses amounted to reimbursement of expenses, which was not taxable in the hands of HoldCo. In connection with training expenses, it held that the payments were not reimbursement of expenses but remission of amount by the by the Taxpayer to the Holdco for finally making the payment to third party service provider and, hence, was a payment to third party. Accordingly, provisions of withholding of taxes under the ITA will apply as if the Taxpayer has made the payment to an independent third party service provider.

*For more details, please refer Ernst & Young Tax Alert dated 12 April 2013.*
In another instance, the Bombay HC, in the case of CIT v. OCD Engineers (Taxpayer) [TS-89-HC-2013(BOM)], ruled that, where the Taxpayer made payments to a foreign sister concern (FCo) for deputing employees to work for the Taxpayer and such payment was restricted to cover the salary at cost of deputed employees, it would partake the character of reimbursement not taxable in the hands of FCo.

On similar facts, the Chennai Tribunal, in the case of CMS (India) Operations & Maintenance Co. Pvt. Ltd. [TS-204-ITAT-2013(CHNY)], ruled that there was no need to withhold taxes where the payments made were only on account of manpower cost of deputed employees. The deputed employees were on the on the payroll of a foreign company (FCo), a group entity, which had withheld Indian taxes on the salaries paid. Even if considered as technical service payment to FCo, the payment would not satisfy the make available requirement under the India-US DTAA.

Recent decisions on taxation of royalty/FTS payments

Summarized below are some decisions that have analyzed whether the payments are taxable as royalty and FTS, also considering the scope under a relevant DTAA.

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<th>Case law</th>
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| ITO v. Right Florists Pvt. Ltd. [TS-137-ITAT-2013(KOL)] Kolkata Tribunal | Payments for online advertisement on search engines of Google/Yahoo                | • Placing reliance on earlier Tribunal rulings, held that the payment for online advertising services is not in the nature of royalty.  
• Payment held as also not FTS, as the whole process of online advertising is automated in which there is no human intervention. The decision was based on SC’s decision in Bharti Cellular [(2011) 330 ITR 239 (SC)], wherein it was held that “human intervention” was essential for the service being characterized as FTS. |
| Section 195 of India-Ireland, India-US DTAA |                                                                                      |                                                                                   |
| Romer Labs Singapore Pte. Ltd. v. ADIT [(2013) 30 taxmann.com 362 (Delhi-Trib)] Delhi Tribunal | Service fees paid to Singapore Company (FCo) for obtaining reports on testing of toxicity level in animal feeds | • In terms of India-Singapore DTAA, the payment will constitute FTS only if FCo makes available technical knowledge to the Indian company (ICo).  
• As the test reports provided by FCo did not “make available” technical knowledge etc. to ICo, the payments for such reports were held not FTS. |
<p>| India-Singapore DTAA |                                                                                      |                                                                                   |</p>
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<td>CLSA Ltd. v. ITO</td>
<td>Referal fees paid to a Hong Kong Company (FCo) for referring international clients</td>
<td>• Referring to ruling of the Authority for Advance Rulings (AAR) in the case of Cushman and Wakefield (S) Pte. Ltd., in re [(2008) 305 ITR 208 (AAR)] wherein, on similar facts, the AAR had held that the referral fees was not FTS, the Tribunal held that the referral fees received by FCo was not FTS under the ITA.</td>
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<td>Mumbai Tribunal</td>
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<td>S.9(1)(vii) of ITA</td>
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| PT McKinsey Indonesia v. DDIT                                          | Payment to Indonesian Company (FCo) for information supplied in the nature of data; FCo was in the business of providing strategic consultancy services | • The fact that the information supplied was arising out of exploitation of know-how generated by skills or innovation of person who possesses such talent was not established.  
• The information received by the Payer was in the nature of data and the consideration for the same cannot constitute royalty.  
• The payment should be treated as business profits in terms of Article 7.  
(Note: India-Indonesia DTAA does not have FTS clause) |                                                                                                                                                                                                              |
| [(2013) 29 taxmann.com 100 (Mumbai-trib)]                              |                                                                                                        |                                                                                                                                                                                                              |
| Mumbai Tribunal                                                        |                                                                                                        |                                                                                                                                                                                                              |
| India-Indonesia DTAA                                                   |                                                                                                        |                                                                                                                                                                                                              |
| KPMG v. JCIT                                                           | Payment to a US resident for professional services and to a UK company for conducting workshops on fee negotiation | • None of the services “made available” any technical knowledge, skill, experience etc. according to India’s DTAA provisions with the UK and the US. Hence, it is not taxable as FTS. |                                                                                                                                                                                                              |
| [(TS-91-ITAT-2013-(Mum))]                                              |                                                                                                        |                                                                                                                                                                                                              |
| Mumbai Tribunal                                                        |                                                                                                        |                                                                                                                                                                                                              |
| India-US, India-UK DTAA                                                |                                                                                                        |                                                                                                                                                                                                              |
| Convergys Customer Management Group Inc.                              | Reimbursement of cost to a foreign company (FCo), which procured software and services from another FCo., i.e., for packaged enterprise application software and link charges pertaining to leased lines that allowed a dedicated capacity for a private, secure communication link from India to the US, which enabled Indian company (ICo) to communicate with its customers | • Though Finance Act, 2012 had widened the scope of the definition of “royalty” in the ITA, it does not impact the provisions of a DTAA.  
• Considering the judgment of the Delhi HC in the case of Ericsson AB (ITA No. 504/2007), purchase of software falls within the category of copyrighted article and not toward acquisition of any copyright in the software; hence, does not qualify as royalty.  
• No part of the equipment was leased to ICo. FCo merely procured a service and provided it to ICo. Therefore, the said payments do not constitute royalty under the DTAA.  
• Even otherwise, the payments are in the nature of reimbursement of expenses and, accordingly, not taxable in the hands of FCo. |                                                                                                                                                                                                              |
<p>| [(TS-187-ITAT-2013(DEL))]                                              |                                                                                                        |                                                                                                                                                                                                              |
| Delhi Tribunal                                                         |                                                                                                        |                                                                                                                                                                                                              |</p>
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| Credit Lyonnais v. ADIT [TS-205-ITAT-2013(Mum)] | Sub-Arranger fees and commission paid to NR Banks (FCos) for mobilizing India Millennium Deposits (IMD) [The primary duty of sub-arrangers, as collecting banks, was to persuade the NRIs to invest in such IMDs] both in and outside India. | • From the nature and scope of services rendered by the sub-arrangers, it is manifest that no technical knowledge, expertise or qualification was required. Convincing potential customers and helping them to fill requisite forms and sending the amount to the designated branches, cannot be considered as a “technical service”.  
• The services rendered by the sub-arrangers were only a small part of the management of the IMD issue and Payer was only one of the several banks soliciting subscribers to IMDs. Sub-arrangers were not involved in the “management” of IMD issue. The Payer was simply acting as commission agent or broker for which it was entitled to a particular rate of commission. Held, payment cannot be considered as fees for “managerial services.”  
• Held, sub-arranger fees to mobilize NRI deposits not FTS under ITA. |
DTAA updates

DTAA between India and Ethiopia effective from 1 April 2013
The GoI and the Government of the Federal Democratic Republic of Ethiopia had signed a DTAA on 25 May 2011, which entered into force on 15 October 2012. This DTAA is effective in India from 1 April 2013. It contains an LOB (Limitation of Benefit) clause to deny DTAA benefits, if the main purpose or one of the main purposes of the resident is to obtain DTAA benefits. The LOB clause also provides that the DTAA will not prevent application of provisions of domestic law and measures concerning tax avoidance or evasion.

Source: Notification No. 14/2013 [FT & TR-II/F. No. 503/01/1996-FT & TR-II], dated 21 February 2013

Revised DTAA and protocol amending the 1994 DTAA between India and Malta signed
The GoI and Malta signed a revised DTAA and protocol on 15 April 2013. Once in force and effective, the revised DTAA will replace the current DTAA signed on 28 September 1994.

Source: PIB Press Release dated 15 April 2013

Second protocol amending the 1992 DTAA between India and the UAE enters into force
The 1992 DTAA, as amended by the 2007 protocol, was amended further vide a second protocol signed on 16 April 2012. It is now notified that the second protocol has entered into force and is effective from 12 March 2013. The second protocol will replace the Article concerning Exchange of Information in the existing DTAA.

Source: Notification No. 29/2013 [F.NO. 503/5/2004-FTD-II], dated 12 April 2013

Tax Information Exchange Agreements (TIEA) Updates

India signs TIEA with Liechtenstein
The GoI has entered a TIEA with Liechtenstein on 28 March 2013. The agreement, among others, contains specific provision for providing banking and ownership information. On entering into force, information can be exchanged if it pertains to taxable periods beginning on or after 1 April 2013. The notifications for making the agreements effective are yet to be issued by the GoI.

Source: PIB Press release dated 28 March 2013

India-Argentina TIEA enters into force
The GoI had signed a TIEA with the Government of the Argentine Republic for the exchange of information and assistance in collection with respect to taxes on 21 November 2011. It is now notified that the TIEA has entered into force and is effective from 28 January 2013.

Source: Notification No. 22/2013 [F.NO. 504/3/2010-FTD-II]/SO 824(E), dated 22 March 2013

India- Gibraltar TIEA enters into force
The GoI had signed a TIEA with the Government of Gibraltar for Exchange of Information with respect to taxes on 1 February 2013. It is now notified that the TIEA has entered into force and is effective from 11 March 2013.

Source: Notification No. 28/2013 [F.NO.503/11/2009-FTD-I], dated 1 April 2013
OECD issues report on after-tax hedging

The OECD issued a report titled Aggressive Tax Planning based on After-Tax Hedging (Report) on 14 March 2013. After-tax hedging is designed to ensure that the hedging arrangement achieves a neutral position once the effect of tax in respect of an arrangement is taken into account. In its Report, the OECD acknowledges that after-tax hedging is not aggressive by itself; it is recognized as a frequently used risk management technique to achieve a post-tax effective hedge.

[For more details on this development, please click here to refer Ernst & Young Global Tax Alert dated 15 March 2013]

OECD publishes report on Co-operative Compliance

On 17 May 2013 the OECD Forum on Tax Administration (FTA) published a preliminary report titled Co-operative Compliance: A Framework – From Enhanced relationship to co-operative compliance(Report). The Report is designed to explore past and current experiences in relation to the concept of enhanced relationships between taxpayers and taxing authorities and sets out how such a concept is likely to be developed and improved in future. A significant part of the Report is dedicated to providing support to tax authorities in demonstrating the value of the approach. It should be noted that the Report issued is in “preliminary” form, indicating that future amendments are likely.

[For more details on this development, please click here to refer Ernst & Young Global Tax Alert dated 22 May 2013]
Dutch SC provides new guidance on shareholder loan doctrine

In a ruling issued on 3 May 2013, according to the Dutch Supreme Court, a loan is considered not to have been provided under arm’s length considerations, i.e., shareholder motives, if a Dutch corporate taxpayer provides a loan to a related party and accepts a credit risk which a third party – not being a shareholder of the aforementioned entity – would not have accepted, not even for an increased interest compensation. As a consequence, any losses incurred by the Dutch corporate taxpayer in relation to this loan, are considered non-deductible for Dutch corporate income tax purposes.

[For more details on this development, please click here to refer Ernst & Young Tax Alert dated 8 May 2013]

Singapore’s HC rules in favor of the taxpayer in anti-avoidance case; Tax authorities did not exercise powers fairly and reasonably

The Singapore HC rendered its decision on an appeal by AQQ [AQQ v. CIT [2012] SGHC 249], a Singapore company, regarding the application of the general anti-avoidance provision. While the HC concluded that the financing arrangement fell within the anti-avoidance provision under the Singapore Income Tax Act (Act), AQQ won the appeal on the grounds that the Comptroller did not exercise its powers under the Act fairly and reasonably.

[For more details on this development, please click here to refer Ernst & Young Tax Alert dated 25 April 2013]
Israel’s Tax Authority issues new tax ruling on operations held by overseas companies outside Israeli territorial waters

The Israeli Tax Authority (TA) has issued Tax Ruling 8679/13 (Ruling) holding that drilling services provided by an overseas supplier (Applicant) in the Israeli Exclusive Economic Zone (EEZ), outside the territorial waters, is subject to tax in Israel. The TA also ruled that the maintenance of industrial equipment – the drilling rig – for a period of more than six months constitutes a PE in Israel for its treaty country (US) resident owners. In addition, the ruling provides that the mere fact that a third party Human Resources (HR) company seconded employees to the drilling project constitutes an Israeli PE of the foreign HR company (even in the absence of any other business presence in Israel). Finally, the TA ruled that non-Israeli resident companies are obliged to withhold Israeli tax at source from service fees and salaries paid to other non-Israeli residents outside the Israeli territorial waters.

[For more details on this development, please click here to refer Ernst & Young Tax Alert dated 28 March 2013]

US SC resolves circuit split, rules UK windfall profits tax is creditable

In an unanimous decision, the US Supreme Court in PPL Corporation and Subsidiaries v. Commissioner held that the UK “windfall tax” that was computed on the basis of a formula whose primary variable referenced profits previously earned over a multi-year period is a creditable income tax for purposes of Section 901 (a creditable tax). The Court held that, using a “commonsense approach,” that considers the substantive effect of the windfall tax, the predominant character of the windfall tax is that of an income tax in the US sense.

The decision resolves a split between the Third Circuit and the Court of Appeals for the Fifth Circuit as to whether the windfall tax is a creditable tax. The Fifth Circuit had concluded that the windfall tax was a creditable tax.

[For more details on this development, please click here to refer Ernst & Young Tax Alert dated 23 May 2013]

Colombian Tax Authority confirms interest expense attribution to PE

In response to a request from Ernst & Young Colombia, the Colombian Tax Authority confirmed that expenses for interest income derived from loans granted by a Spanish bank to a Spanish resident is likely to be attributed to its PEs in Colombia (including the branches in the special exchange regime) under the agreement to avoid double taxation with Spain.

[For more details on this development, please click here to refer Ernst & Young Tax Alert dated 19 March 2013]
CBDT modifies tax return forms for tax year 2012–13

The Central Board of Direct Taxes (CBDT) has made procedural changes to RoI forms and mode of filing returns by different taxpayers for tax year 2012–13 by way of a Notification. The Notification extends the mandatory requirement to file return in electronic mode (e-filing) to the following classes of taxpayers:

- Taxpayers with taxable income above INR 0.5 million (as compared to INR 1 million for tax year 2011–12)
- Taxpayers claiming foreign tax credit

The Notification also requires taxpayers liable to tax audit or transfer pricing audit or Minimum Alternate Tax (MAT) audit to e-file the respective reports independently in addition to filing of RoI.

Broadly, the Notification provides certain reclassification of return forms for individuals/Hindu Undivided Family (HUF) depending on the presence of foreign assets and/or where taxpayer has claimed foreign tax credit and/or where taxpayer has exempt income exceeding INR5,000.

Source: Notification No. 34/2013/F.No.142/5/2013-TPL, dated 1 May 2013

(For more details on this development, please refer Ernst & Young Tax Alert dated 7 May 2013)

Manner of issue of TDS certificate for salaries

Revised format of Form 16 notified by Notification No. 11 of 2013 dated 19 February 2013 contains two parts, i.e., Part A and Part B. Part A contains details of Tax deduction and deposit to the credit of Central Government. Part B contains details of salary paid, other income and tax deducted thereon. The Circular mandates all deductors to download Part A from TRACES website, which will have unique identification number (UIN). The deductor needs to prepare Part B manually. The deductor has to, thereafter, combine both Parts A and B, authenticate the form (either manually or with digital signature) and, thereafter, issue it to the concerned employee.

The above procedure is applicable for all sums deducted on or after 1 April 2012 from salary income. This effectively means that Form 16 for FY12-13 will need to be issued as per new procedure. The due date for such issue is 31 May 2013.

Source: Circular No. 4/2013 [F.No. 275/34/2011-IT(B)], Dated 17 April 2013

Key direct tax amendments to Finance Bill 2013

The Indian Finance Minister (FM) had presented Finance Bill, 2013 (FB 2013), as part of the Union Budget 2013-14, to Parliament on 28 February 2013. FB 2013 contained many proposals to amend the ITA. With regard to representations made by various stakeholders on the adverse impact of some proposals and/or to correct certain anomalies, amendments have been made to the FB 2013. These have since been assented to by the President on 10 May 2013. The changes made relate to proposals on Tax Residency Certificate; levy of Commodities Transaction Tax; concessional rate of tax on approved borrowings in foreign currency; concessional rate of tax on rupee-denominated bonds; wealth tax on agricultural land etc.

(For more details on this development, please refer Ernst & Young Tax Alert dated 1 May 2013)

(For more details on Budget 2013, please refer Ernst & Young Tax Alerts dated 1 March 2013)
CBDT notifies rules for TDS on immovable property transactions

As introduced by the Finance Act 2013, effective from 1 June 2013, transfer by a resident of immovable property (other than agricultural land) where consideration exceeds INR5 million will be subject to TDS at 1%. The TDS will need to be deducted at the time of credit or payment, whichever is earlier. The CBDT has now notified the rules in this regard requiring the deductor to deposit the tax along with a challan-cum statement in Form No 26QB within seven days from end of month in which the tax is required be deducted. The format for Form 26QB has also been notified. It has further been notified that the TDS certificate in Form 16B should be issued to the payee within 15 days from the due date for furnishing the challan-cum statement in Form No 26QB. Format for Form No 16B has also been notified. Form 16B can be downloaded from the web portal specified by the Director General of Income-tax (Systems).

Source: Notification No. 39/2013, F.No.133/23/2013-SO(TPLXPt.), dated 31 May 2013

Cost Inflation Index for FY 2013–14 notified

The CBDT has notified that Cost Inflation Index for FY13–14 for the purpose of computing capital gains shall be 939.

Source: Notification No.40/2013/F.No.142/7/2013-TPL, dated 6 June 2013
**CESTAT, Ahmedabad**

Classification of a service cannot be questioned at service recipient's end

Finance Act, 1994; in favor of assessee

The assessee filed refund claim under Notification no. 17/2009-ST for the Service tax paid on specified services received in relation to export of goods. Tax invoices raised by the service providers specifically mentioned the service category to be Technical Testing and Analysis/Custom House Agent's Services. Basis the tax invoices received, the assessee filed the refund claim. A part of the refund claim was rejected on the ground that the input services received by the assessee did not fall under the said category and, hence, were not covered by the notification. Held, that refund should be granted to the appellant and that the revenue authority cannot re-classify the services provided under a different head to deny the refund claimed, since it is a settled law that the classification of services at the service recipient's end cannot be done by the revenue authority.

_Ticel Bio Park Ltd. v. Commissioner of Central Excise, Bhavnagar [2013-TIOL-675-CESTAT-AHM]_

**CESTAT, Chennai**

Electricity charges toward electricity consumed by tenant and recovered on actual basis by landlord are not be includible in value of renting of immovable property services

Finance Act, 1994; in favor of assessee

The assessee was engaged in rendering of "Renting of Immovable Property Services" and was discharging due Service tax liability on rentals received. However, the assessee did not include the electricity charges recovered from the tenant in the taxable value for discharge of Service tax liability. Subsequently, Service tax demand was raised on the grounds that such electricity charges recovered were liable to Service tax by inclusion in the value of renting services. Held, that that no Service tax is payable on electricity charges recovered on actual basis, which were paid to the Electricity Board. The Tribunal held that as the assessee did not collect any excess money over the electricity charges, the activity of the assessee was covered by the definition of Pure Agent as per Rule 5(2) of the Service tax (Determination of Value) Rules. Accordingly, such reimbursable expenses need not be included in the taxable value of the renting services.

_Ticel Bio Park Ltd. v. Commissioner of Central Excise, Bhavnagar [2013-TIOL-675-CESTAT-AHM]_

**CESTAT, Mumbai**

Refund claim for interest on delayed payment of Service tax denied, once the service tax liability is accepted

Finance Act, 1994; in favor of revenue

The assessee, manufacturer of motor vehicles, entered a Technology Transfer Agreement with Skoda Auto A.S. It paid Service tax along with interest during the period the show cause notice was pending. However, after a subsequent High Court judgment, it was decided that Service tax was not leviable on the said transaction. Held, that since the appellant did not take recourse to claiming refund of Service tax paid, it is implied that they have admitted their Service tax liability, and once the liability has been admitted, the same should be paid along with interest. Refund claim of interest for the delayed payment of Service tax paid was thus, denied.

_Skoda Auto India Pvt. Ltd. v. Commissioner of Central Excise, Aurangabad [2013 (5) TMI 205 CESTAT, MUMBAI]_
CESTAT, Mumbai

Refund of CENVAT credit denied in respect of onsite services as they do not constitute exports

Finance Act, 1994; in favor of revenue

The assessee was engaged in the provision of onsite software development services, i.e., services provided to overseas customers from outside India. The question before the Tribunal was whether the onsite services provided by it would qualify as exports. Held, that the said services provided by the assessee do not qualify as “export” as they do not satisfy the condition of “provided from India” as stipulated under Rule 3(2) of the Export of Service Rules, 2005 applicable at the relevant time. Accordingly, refund of unutilized CENVAT credit was denied.

*Tech Mahindra Ltd. v. Commissioner of Central Excise, Pune [2013-TIOL-543-CESTAT-MUM]*

CESTAT, Mumbai

Value of electricity supplied free of cost to service provider required to be included in the value of taxable services

Finance Act, 1994; in favor of revenue

The assessee was providing operation and maintenance services to its clients and was discharging due Service tax on consideration received for provision of such services. Upon scrutiny of accounts, it was observed that the clients were providing electricity free of cost to the assessee. Given the same, demand for non-payment of Service tax on the value of electricity received by the assessee was raised on the grounds. Held, that *prima-facie*, the value of electricity supplied free of cost by the service receiver, is a consideration for services rendered and hence, their value should be included in the value of taxable services provided.

*Inox Air Products Ltd. v. Commissioner of Central Excise, Nagpur [2012-IST-50-CESTAT-MUM]*
Availing of credit for procurements made prior to obtaining Service tax registration permissible

The assessee imported certain machinery and had applied for registration even before the receipt of the machinery. It took credit of 50% of the duty paid on the imported machinery for the first financial year after getting the registration. The question before the Tribunal was whether the assessee is eligible to take CENVAT credit of the duty paid on machines imported prior to the date on which Service tax registration was granted. Held, that the assessee is eligible to take CENVAT credit as there is nothing in the rules prohibiting a person from maintaining proper accounts of goods on which credit should be eligible. Furthermore, credit was availed only after obtaining registration. The business records maintained correctly, reflecting the correct position, were accepted.

Global Digital Color Lab v. Commissioner of Central Excise-I, Jaipur-I [2013 (4) TMI 70 CESTAT, NEW DELHI]

Transfer of CENVAT credit under Rule 10 allowed even if the raw material do not get transferred

The assessee applied for transfer of duty balance lying in the CENVAT account subsequent to the new registration replacing them with the earlier unit Auto Tube Plant. It also sought permission for the transfer of entire stock of input along with capital goods. The question before the Tribunal was whether the assessee was eligible for transfer of CENVAT credit under Rule 10 even if the raw material did not get transferred. Held, that the benefit of transfer of CENVAT credit will be available to the assessee even if there was no stock of raw material lying with Auto Tube Plant, considering that the revenue did not contend that the raw material was cleared outside by Auto Tube Plant.

Modi Tyres Co. P. Ltd. v. Commissioner of Central Excise, Meerut-I [2013 (4) TMI 54-CESTAT, NEW DELHI]

Reversal of entire CENVAT credit taken, along with interest thereon, amounts to non-availment of credit

The assessee, engaged in the manufacture of both dutiable and exempted goods, availed credit of Service tax paid on common input services used in the manufacture of dutiable as well as exempted goods. Separate accounts were not maintained as the assessee was unaware of the provisions of CENVAT Credit Rules, 2004. When the mistake was pointed out by the revenue, they reversed the credit taken on the input services used in the manufacture of exempted goods as well as dutiable goods. The question before the Tribunal was whether the provisions of Rule 6(3) will be attracted requiring the assessee to pay an amount at the rate of 5%/10% of the value of exempted goods. Held, that the reversal of the entire credit taken along with interest thereon, amounts to non-availment of credit and thus, provisions of Rule 6(3) will not be attracted.


Excise duty paid on inputs and Service tax paid on input services used in construction can be utilized for discharging Service tax liability on renting of immovable property

The assessee was engaged in rendering of taxable service of “renting of immovable property” and was discharging due Service tax liability on the same. The assessee had availed CENVAT credit of Service tax paid on various services and Excise duty paid on input, used in construction of the said mall (immovable property) and utilized the credit for payment of output Service tax liability. Such CENVAT credit was denied on the grounds that, according to Circular No. 98/1/2007-S.T dated 4 January 2008 issued by the Central Board of Excise and Customs, CENVAT credit of the Service tax paid on construction service or works contract service cannot
be treated as input services for providing renting of immovable property service. Held, that *prima-facie*, Excise duty paid on input and Service tax paid on input services used in the construction of immovable property can be taken and utilized for discharging Service tax liability on the renting of such immovable property.

*Oberoi Mall Ltd. v. Commissioner of Service tax,* [2013-TIOL-604-CESTAT-MUM]

**High Court, Gujarat**

Goods cleared under “Served From India Scheme” (SFIS) should not be treated as “exempted goods” for the purposes of CENVAT Credit Rules, 2004

CENVAT Credit Rules, 2004; in favor of assessee

The assessee had not maintained separate books of accounts under Rule 6(3) of the CENVAT Credit Rules, 2004 with respect to goods cleared on payment of Excise duty and goods cleared under the SFIS. The revenue authority demanded 10% of the value of goods cleared under SFIS during disputed period (May 2007–November 2007) on the grounds that goods cleared under SFIS should qualify as “exempted goods.” The question before the Court was whether goods cleared against SFIS scrip can be treated as exempted goods for the purpose of reversal of credit under aforementioned Rule 6(3). Held, the exemption, which has been granted under the SFIS is subject to specific conditions. The benefit is only available if SFIS Certificate is produced before the authority at the time of clearance. Thus, conditions in the SFIS Certificate are to be treated as “discharge of duty” similar to the clearance of goods for export under the letter of undertaking. The SFIS Certificate produced before Excise Officer is for deuting Excise duty leviable on the goods and therefore, the same will amount to discharge of duty liability and not an exemption. Accordingly, goods cleared against SFIS scrips should not be treated as exempted goods for the purpose of CENVAT Credit Rules, 2004.

*Commissioner of Central Excise and Customs Vadodara – II v. Voltamp Transformers* [2013 (4) TMI 303 - GUJARAT HIGH COURT]
CESTAT, Delhi

VCD players cleared as free supply along with CTVs chargeable to Excise duty

Central Excise Act, 1944; in favor of revenue

The assessee, engaged in the manufacture of VCD players and CTVs, cleared combination packs of certain models of CTVs along with VCD players, the VCD being given free along with these models of CTVs. The duty was paid by the assessee on the value determined on the basis of the MRP of the combo pack of CTVs along with VCD players. The question before the Tribunal was whether the MRP of the VCD player should be taken as nil as the VCD players had been given as free. Held, that duty will be chargeable on the clearance of VCD players, on the basis of the assessable value determined in terms of the provisions for MRP-based valuation, by adopting reasonable criteria.


CESTAT, Delhi

Tariff classification of combination packs to depend on component, which gives the essential character to the pack

Central Excise Act, 1944; in favor of assessee

The assessee was engaged in manufacture of All Out refill bottles containing insecticides falling under Chapter Heading 3808 and electro-thermic apparatus falling under Chapter Heading 8516 of the First Schedule to Central Excise Tariff Act, 1985. The assessee cleared the above mentioned goods, in combination pack together known as “All Out Combi Pack” under heading 3808, availing MRP-based abatement of 35%. Demand was raised on the assessee on the grounds that such combi-packs should fall under chapter heading 8516 and should not be entitled to abatement. Held, that classification needs to be made based on the goods, which give the essential character to the combination pack. Further, in order to determine, which product gives the essential characteristic to the pack, it will be important to look at the combination pack from the buyer’s perspective. In the instant case, as prospective buyer will purchase such combination pack for using it as mosquito repellent, the right classification for the pack would be under Chapter heading 3808, which relates to insecticides etc., and not under Chapter heading 8516 relating to electric heating apparatus.

Karamchand Appliances Pvt. Ltd. v. Commission of Central Excise, Chandigarh [2012 (284) ELT 692 (Tri- Del.)]
CESSTAT, Mumbai

Supply of goods to SEZ would amount to deemed exports under the SEZ Act, 2005 and therefore, benefit of the exemption notification should not be denied to the assessee.

Customs Act, 1962; in favor of assessee

The assessee imported oil well equipment claiming the benefit of Notification no. 21/2002-Cus, which grants full duty exemption subject to the condition that the goods should be imported under a certificate issued by the Directorate General of Hydrocarbons certifying that the goods are required for the petroleum operations to be undertaken under a contract with the GoI. Furthermore, the notification provided that the goods must be re-exported after usage. After using the goods for the said purpose, the assessee sent these goods to SEZ, which is deemed as exports under the SEZ Act, 2005.

The question before the Tribunal was whether supply of goods to SEZ would be an export so as to be eligible to claim benefit of the exemption notification. Held, that the supply of goods to SEZ would amount to deemed exports under SEZ Act, 2005 and the benefit of the notification cannot be denied as there was no failure on the part of the assessee in fulfilling the terms and conditions of the notification.

BJ Services Company Middle East Ltd. v. Commissioner of Customs (Imports) Mumbai [2013-TIOL-637-CESTAT-MUM]
Dispensing of medicines by doctors during the course of integrated packaged treatment cannot be considered as a sale

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

The assessee, engaged in rendering medical services, has hired doctors who dispense homeopathic medicines to patients, in the course of medical treatment. The question before the Tribunal was whether such medicines dispensed by the doctors to the patients would constitute sale of goods. Held, that transfer would not attract levy of VAT. By applying the dominant nature test as well as the transaction nature, it was held that the dispensing of medicines by doctors during the course of integrated package treatment cannot be considered as sale so as to be liable to VAT under the Karnataka Value Added Tax, 2003.


Claim of stock transfer against Form F to branches cannot be denied on account of non-inclusion of branches in the registration certificate

U.P. Trade Tax Act 1948 & Central Sales Tax Act, 1956; in favor of assessee

The assessee was operating through its office in Kanpur, which was registered under the UP Trade Tax Act, 1948 and Central Sales Tax Act, 1956. The assessee transferred certain stock of automobile tyres and tubes to its branches located outside UP and such stock transfers were accepted by the relevant officer during assessment proceedings. Subsequently, the Assessment Officer sought to reopen the assessment order on the grounds that the branches to which the aforesaid stock transfers were made were not disclosed in the application for CST registration. Accordingly, such stock transfers to undisclosed branches could not be accepted and were, instead, to be treated as inter-state sales. Held, that the genuineness or correctness of Form F issued by branches outside the state has not been disputed and, thus, there is no dispute that such goods were not transferred to branches. Although such branches were not disclosed in the registration application, the law does not provide that in such cases, the claim that such transactions were stock transfers will be rejected.

Key statutory developments

**FTP**

DGFT clarifies availability of deemed export benefits for power projects

Due to recent changes in the policy relating to deemed export benefits for power projects, clarifications have been issued with respect to some of the issues. The main aspects clarified are:

- Deemed export benefits are not available for supplies to non-mega power projects
- Deemed Export benefits under Paragraph 8.2 (f) are available only for supplies made under international competitive bidding (ICB) except for mega power projects. For mega power projects, supplies could be either under ICB or other than ICB. In case such supplies are under ICB, Terminal Excise Duty (TED) exemption would be available. If supplies are not under ICB, TED refund would be available.

*Policy Circular No 1 (RE-2013/2009-14) dated 29 May 2013*

**Service tax**

CBEC notifies Service tax exemption against focus product/focus market scheme duty credit scrip

Subject to fulfillment of prescribed conditions, taxable services provided against duty credit scrip earned under the focus product/focus market schemes would be eligible for exemption.

*Notification No. 6/2013 ST dated 18 April 2013 and Notification No. 7/2013 ST dated 18 April 2013*

**Central Excise**

Amendment in forms for filing appeal before CESTAT

Forms ST-5, ST-6, ST-7 for filing appeal under Service tax before CESTAT have been amended.

*Notification no. 5/2013 ST dated 10 April 2013*

**Customs**

Amendment in forms for filing appeal before CESTAT

Forms CA-3, CA-4, CA-5 for filing appeal under Customs before CESTAT have been amended.

*Notification no. 37/2013 Customs (NT) dated 10 April 2013*
VAT

Increase in VAT rates in the states of Kerala and West Bengal (effective 1 April 2013)

West Bengal

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*Notification No. 543-L dated 26 March 2013*

Kerala

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<tr>
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</table>

*Memorandum, Kerala (Finance) Bill 212 dated 28 March 2013*

VAT, Delhi

Amendment in definition of sale price, effective from 28 March 2013

Sale price of goods imported into territory of India shall be greater of the following:

- Valuable consideration received or receivable by the dealer
- Value determined by the customs authorities for payment of Customs duty at the time of import of such goods

*Notification No. F.14(4) LA-2013/Coms2Law/11 dated 28 March 2013*

Change in tax period for all dealers to a quarter, effective from 30 March 2013

All dealers (irrespective of the quantum of turnover) will be required to file returns on a quarterly basis.

*Notification No. F.3(15) FIN.(Rev - I)/ 2012-13/DSVI/264 dated 30 March 2013*
Consolidated Foreign Direct Investment (FDI) Policy – Circular 1 of 2013

Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry (Government) released Consolidated Foreign Direct Investment (FDI) Policy – Circular 1 of 2013.

The circular updates all instructions/clarifications/press notes issued by the GoI relating to the FDI Policy, as of 5 April 2013, and has superseded the Circular 1 of 2012 issued by the GoI.

The contents of Press Note 2 to Press Note 9 of 2012, and Reserve Bank of India (RBI) notifications issued from time to time during the year have been updated into the FDI Policy. The key change in the policy has been:

- Clarification on Limited Liability Partnership (LLP): It has been clarified that the mandatory condition of participation in LLP only through cash consideration is not applicable in cases of conversion of company into LLPs.

DIPP Circular 1 of 2013 dated 5 April 2013

FDI in India: issue of equity shares under the FDI scheme allowed under the Government route against pre-operative/pre-incorporation expenses

The RBI has amended the condition for issue of equity shares under the FDI scheme allowed under the Government route against pre-operative/pre-incorporation expenses.

The previous condition was:

“Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI;”

The revised condition is:

“Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.”


Format for seeking clarification for FDI policy issues

The DIPP has issued a format to seek clarifications on the FDI policy issues. It was noted by the DIPP that several requests for clarification are not accompanied by specific/adequate details of the proposal for which clarification is sought.

In view of the above, the DIPP has decided that henceforth, it will process only those requests, which provide complete details according to the prescribed format.

DIPP notice dated 10 May 2013
“Write-off” of unrealized export bills – Export of Goods and Services – simplification of procedure

With a view to further simplifying and liberalizing the procedure and for providing increased flexibility to all exporters as well as the Authorized Dealer (AD) banks, the RBI has decided to liberalize the limits of “write-offs” of unrealized export bills as follows.

a) Self “write-off” by an exporter ---------------------- 5% (Other than Status Holder Exporter)
b) Self “write-off” by Status Holder Exporters ---10%*
c) “Write-off” by AD bank ---------------------------- 10%*

(*of the total export proceeds realized during the previous calendar year)

The above “write-off” will be subject to specified conditions.


Export of goods and software: reduction in realization and repatriation period

The RBI has reduced the period of realization and repatriation to India, of the amount representing the full value of goods or software exported from twelve months to nine months from the date of export, with immediate effect. The decision will be reviewed in September as the circular issued in this regard has validity up to 30 September 2013.

The provisions with regard to a period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.


Trade credits for imports into India; review of all-in-cost ceiling

The RBI has reviewed and decided that the all-in-cost ceiling with respect to trade credits will remain the same (6 months LIBOR plus 350 basis points) till 30 June 2013 and will be subject to review thereafter.

RBI/2012-13/475 A.P. (DIR Series) Circular No. 98 dated 9 April 2013

Investment by Navratna public sector undertakings, OVL and OIL in unincorporated entities in oil sector abroad

Navratna public sector undertakings (PSUs) and ONGC Videsh Ltd. (OVL) and Oil India Ltd. (OIL) have been allowed to make overseas investment in the incorporated JV/WOS in the oil sector in addition to the investment permitted in overseas unincorporated entities without any limits under the automatic route.

Overseas direct investments (ODI): clarification

The RBI had observed that eligible Indian parties are using the ODI automatic route to set up certain structures facilitating trading in currencies, securities and commodities and have also started offering financial products linked to the Indian Rupee. The RBI has thus clarified that any overseas entity, which have direct/indirect equity participation will not offer aforesaid products without the specific approval of the RBI given that currently the Indian Rupee is not fully convertible and such products could have implications for the exchange rate management of the country.

RBI/2012-13/481 A.P. (DIR Series) Circular No. 100 dated 25 April 2013

Maintenance of Collateral by Foreign Institutional Investors (FIIs) for transactions in the cash and F&O segments

The RBI in consultation with the GoI and the Securities and Exchange Board of India (SEBI) has decided to permit FIIs to use, in addition to already permitted collaterals, their investments in corporate bonds as collateral in the cash segment and government securities and corporate bonds as collaterals in the Futures & Options (F&O) segment.

Henceforth, FIIs will be eligible to offer government securities/corporate bonds cash and foreign sovereign securities with AAA ratings in both cash and F&O segments.


Core investment companies (CICs) – Guidelines on investment in insurance

The RBI has issued guidelines for CICs for their entry into insurance business. The guidelines stipulate no ceiling for CICs in their investment in an insurance joint venture.

CICs exempted from registration with the RBI do not require prior approval. The investment in insurance joint venture shall be guided by Insurance Regulatory and Development Authority (IRDA) norms and CIC cannot enter the insurance business as agents.

Detailed guidelines are provided in the circular.

RBI/2012-13/429 DNBS (PD) CC.No.322/03.10.001/2012-13 dated 1 April 2013

Foreign investment in India by SEBI registered FIIs in government securities and corporate debt

Currently, the limit for investments by FIIs and long-term investors in government securities is US$25 billion and for corporate debt is US$51 billion (including sub-limit of US$25 billion each for bonds of infrastructure sector and non-infrastructure sector and US$1 billion for Qualified Foreign Investors (QFIs) in non-infrastructure sector).

The RBI has decided to simplify the existing limits into two broad categories:

(i) Government Debt limit: Government securities of US$25 billion by merging the existing sub-limits under government securities (a) US$10 billion for investment by FIIs in government securities including Treasury Bills and (b) US$15 billion for investment in Government dated securities by FIIs and long term investors]

(ii) Corporate Debt Limit: Corporate debt of US$51 billion by merging the existing sub-limits of Corporate debt (a) US$1 billion for QFIs, (b) US$25 billion for investment by FIIs and long-term investors in non-infrastructure sector and (c) US$25 billion for investment by FIIs/QFIs/long-term investors in infrastructure sector).

RBI/2012-13/465 A.P. (DIR Series) Circular No.94 dated 1 April 2013
Scheme of Arrangement under the Companies Act, 1956 - Revised requirements for the Stock Exchanges and Listed Companies - Clarification

The SEBI has clarified some of the outstanding issues pertaining to the circular dated 4 February 2013 on scheme of arrangement.

The SEBI has clarified that the scheme is not limited to reverse listings or other schemes that is likely to require an exemption under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957, but is applicable to all types of schemes of arrangement including amalgamation, reconstruction and reduction of capital.

Further elaborate clarifications are provided in the circular.

SEBI CIR/CFD/DIL/B/2013 dated 21 May 2013
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Positive intent, but it’s time to deliver
Rajiv Memani, The Financial Express

Budget 2013 proposals inscrutable for FIIs?
Sudhir Kapadia, The Economic Times

Investors greet Budget with a yawn
Satya Poddar, Business Standard

Budget inspires courage to brave storm
Harishanker Subramaniam, The Financial Express

Indirect taxes: Not tailored for a perfect fit
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