Tax & Corporate News Bulletin

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VAISH ASSOCIATES ADVOCATES
Corporate, Tax and Business Advisory Law Firm

Inside...

Merry Christmas & Happy New Year

Vaish Associates wishes all the Clients, Business Partners, Associates and Staff a Merry Christmas and a professionally Prosperous New Year 2008

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INCOME TAX

New CBDT Circulars on TDS Refund

The Central Board of Direct Taxes (CBDT) vide Circular No. 7/2007 dated 23-10-2007 enlarged the list of circumstances under which the person deducting tax at source on credit/ payment to a non-resident can claim refund of the tax deducted, to include the following:

- where contract with non-resident is cancelled after partial execution;
- where the remitted amount becomes exempt subsequently on account of any change in law;
- where tax required to be deducted is reduced on passing of any orders by Income-tax authorities;
- where double-deduction takes place by mistake;
- where payment of tax was made on account of grossing up, which was not required;
- where a lower rate is prescribed under relevant Double Tax Avoidance Treaty but tax has been deducted at a higher rate.

The procedure for claiming refund remains the same as prescribed in the earlier Circular No. 790 dated 20-4-2000. An additional requirement imposed for granting the refund is that the deductee should not have filed a return of income and the time for filing such return should have expired.

Taxation of Non-Resident Employee's Salary in India

- In a recent decision in the case of ***S. Mohan v. DIT reported at 294 ITR 177,*** the Authority for Advance Ruling (the 'Authority') held that the salary paid by an employer in India to a non-resident employee, for services rendered on deputation outside India, was liable to tax in India.
- The concerned employee had sought to argue that in terms of Article 16 of the Indo-Norway DTAA, the salary was not liable to tax in India. The Authority, however, held that the relevant Article of the DTAA provided taxing rights to both countries on such salary income in the specific facts and if income was actually taxed in Norway, India could only allow necessary double taxation relief. The salary income was, thus, held to be taxable in India.
- It is, however, pertinent to note that in this case, the liability to tax in India under the provisions of the Indian Income-tax Act itself was not disputed by the applicant assessee.

Capital Gains Tax on Listed Shares

- Section 112 of the Income-tax Act, 1961 provides that long-term capital gains are, ordinarily, to be taxed at rate of 20%. A beneficial rate of 10% has been provided in the case of listed shares where the benefit of indexation of cost has not been availed by the assessee. The Income-tax Department has been taking the view that since the benefit of indexation is not available to a non-resident assessee, the provision regarding such lower rate of tax is not applicable to it.
- However, in a recent decision in the case of ***Timken France v. DIT: 212 CTR 349,*** the Authority for Advance Rulings has rejected this contention of the Department, holding that non-resident assessees can also claim lower tax rate of 10% on transfer of long-term listed securities or units notwithstanding that the benefit of foreign exchange fluctuation is available to such assessee, under the first proviso to section 48 of the Income-tax Act. The Authority observed that merely because section 112 referred to the provisions relating to indexation, it did not rule out the applicability of that section to other assesses not entitled to such indexation.

India signs Tax Treaty with Iceland

- India signed a Double Taxation Avoidance Agreement (DTAA) with the Government of Iceland on 23-11-2007, for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income.
- The DTAA, which will be subsequently notified, provides for taxation of dividend, interest, royalties and fees for technical services-both in the country of residence as well as the country of source.
- The DTAA provides that capital gains from alienation of shares of a company shall be taxable in the country where the company is a resident. The incidence of double taxation shall be avoided by one country giving credit for taxes paid by its residents in the other country. The DTAA also contains a clause for limitation of benefits.

EXCISE & SERVICE TAX

CENVAT on removal of used Capital Goods

Amendment in rule 3 of CENVAT Credit Rules, 2004

Central Government has issued the CENVAT Credit (Tenth Amendment) Rules, 2007 to amend the CENVAT Credit Rules, 2004. A new proviso has been inserted in the CENVAT Credit Rules, 2004, in rule 3(5), after the second proviso, which provides that -if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

(Source: Notification No. 39/2007-Central Excise (N.T.), Dated 14-11-2007)

Exemption of service tax on specified taxable services received by exporters and used for export of goods

- The Government has issued Notification No. 41/2007-ST dated 06-10-2007 superseding Notification No. 40/2007 dated 17-09-2007, which provides for exemption to the exporter of goods for specified taxable services received and used by the exporter for the export of the said goods.
- Such exemption shall be provided refund by way of refund of service tax paid on specified services used for export of the said goods. The exporter has, therefore, to first pay service tax on the specified services in order to become eligible to claim refund thereof.
- Further, it is to be ensured that no CENVAT Credit of service tax paid on the specified services used for export of said goods has been taken, and the said goods have been exported without availing drawback of service tax paid on specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.
- The exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this Notification.

For details, please visit www.cbec.gov.in

Mandatory Self-Sealing for Export of Excisable Goods where No Export Incentive is Claimed by the Exporter

- Central Board of Excise and Customs (CBEC) has issued circular no. 860/18/2007-CX dated 22-11-2007 making it mandatory for every exporter to export the goods under the cover of Self Sealing in case no export incentive is being claimed by the exporter.
- In case of exports under free Shipping Bill, i.e., Shipping Bills wherein no export benefits are being sought, the manufacturer-exporter shall henceforth mandatorily resort to self-sealing of containers. Further, with a view to ensure safety and security of the export consignment, all such containers should be sealed with tamper proof one time bottle seals as stipulated under CBEC Circular No. 01/2006-Cus., dated 02-01-2006.
- However, where exports are against free shipping bills, no opening/ examination of containers will be done at the port of export, except where there is intelligence/ information about any concealment, mis-declaration, etc., in terms of CBEC Circular No. 6/2002-Cus. dated 23-1-2002.

CORPORATE LAWS

Additional Disclosure Requirements in the Financial Statements of Companies Amendment in Schedule VI to the Companies Act, 1956

In exercise of the powers conferred by section 641(1) of the Companies Act, 1956 (the "Act"), the Central Government has made following alterations in Schedule VI to the said Act, which shall come into effect from 16-11-2007:

Under ***"Part I Form of Balance-Sheet, under heading-A. Horizontal Form"***, the following alterations have been made:

(1) In the [first] column relating to ***"Instructions in accordance with which liabilities should be made out"***, for the [second] paragraph appearing against the sub-heading ***"Current Liabilities and Provisions"***, occurring in the second column, the following paragraph shall be substituted, namely:

"The following shall be disclosed under notes to the accounts:

(a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (the **"MSME Act"),** along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the MSME Act;

(d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23 of the MSME Act.

(2) In the [second] column relating to ***"Liabilities"***, under the heading "current liabilities and provisions", after item (2), the following sub-items shall be substituted, namely:

(a) total outstanding dues of ***micro enterprises and small enterprises;*** and

(b) total outstanding dues of ***creditors other than micro enterprises and small enterprises.***

(3) In the "Notes" embodying ***General Instructions for preparation of balance sheet,*** for item (q), the following shall be substituted, namely:

(q) the terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall be as defined under clauses *(b), (d), (e), (h), (m)* and *(n)* respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.

(Source: Notification no. G.S.R. 719(E), dated 16-11-2007)

Application for change of name of an existing company or new name of a proposed company (Substitution of rule 4A)

✧ Rule 4A deals with the change of the name of the existing company or name with which the proposed company is to be registered.

✧ The substituted rule 4A, which comes into effect from 19-11-2007, inter alia provides that in case the proposed name is available, such name shall be available for adoption by the said company or by the said promoters of the company for a period of 60- days from the date the name is allowed. Further, one time extension of 30-days shall be allowed on payment of 50% of the fee prescribed for the application at the initial stage.

(Source: Notification No. G.S.R. 720 (E), dated 16-11-2007)

Extension of time in case of omission of filing of the particulars of the registration/ modification of the charge or intimation of payment or satisfaction thereof

The Ministry of Corporate Affairs ("**MCA**") has issued a General Circular no. 13/2007 dated 27-9-2007 in terms of the Company Law Board (CLB) Order dated 1-8-2007. Accordingly, the following shall take place with effect from 27-10-2007:

1) Documents for registration/ modification/ satisfaction of charge (excepting those mentioned in the CLB Order) shall be accepted for filing under MCA 21.

2) The Registrar of Companies shall register the documents so filed by levying additional fee prescribed in section 611(2) of the Companies Act, i.e., not exceeding ten times the amount of fee specified in Schedule X to the Companies Act.

3) All applications pending with the CLB, prior to the effective date (i.e., 27-10-2007 shall not be registered by the concerned Registrar until the delay is condoned by the respective regional benches as hereto before.

4) The present system of filing applications before the CLB under section 141 of the Companies Act shall continue in respect of all other matters except for extension of time in case of omission of filing of the particulars of the registration/ modification of the charge or for the giving of intimation of payment or satisfaction thereof up to a period not exceeding 300 days from the date of event.

The circular is available at http://www.mca.gov.in/

(Source: General Circular no. 13/2007, dated 27-9-2007)

SEBI/CAPITAL MARKETS

Registration of Foreign Institutional Investors and Policy Measures on Offshore Derivative Instruments

Securities and Exchange Board of India ("**SEBI**") has issued a Press Release vide *PR No.286/2007 dated 25-10-2007* on the issue of registration of Foreign Institutional Investors (FII) and Policy measures on Offshore Derivative Instruments (ODIs) viz., participatory notes. Some of the highlights of the Press Release are as under:

- FIIs/ sub-accounts shall not issue/renew ODIs with underlying as derivatives with immediate effect. SEBI clarified that there is no bar proposed on renewal of ODI contracts, provided the renewal does not exceed 18-months. Current positions over 18-months are required to be wound up.
- Issuance of ODIs by the sub-accounts of FIIs will be discontinued with immediate effect. Sub-account applicants transitioning to register as FIIs would be treated as if they were FIIs as on the date decided for calculation of Assets under Custody ['AUC'] viz., 30-9-2007.

For details, please visit: http://www.sebi.gov.in.

(Source: PR No.286/2007 dated 25-10-2007)

SEBI Grants Exemption from making an Open Offer under Takeover Regulations

- In the case of M/s Jain Studios Limited ('Target Company'), SEBI vide its order dated 17-10-2007, granted exemption to the Acquiring promoter, from making an open offer in terms of regulation 11 (2 & 2A) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Regulations"), with regard to acquisition of shares via preferential allotment of equity shares of Jain Studios Limited of around 20% of voting capital.
- Notwithstanding the merits of the proposal, though such kind of decisions may prima facie lead to denying of opportunity to the small shareholders to exit from the Company, yet in the present case, SEBI has granted exemption from the open offer for acquisition of the shares via preferential issue based on strong submission by the Promoters that pursuant to the said increase in voting rights, there would not be any change in control of the target Company.

For details, please refer http://www.sebi.gov.in/

FOREIGN EXCHANGE LAWS/RBI

Liberalized Remittance Scheme for Resident Individuals

RBI has increased the limit for remittance under the Liberalized Remittance Scheme for resident individuals from the existing US$ 100,000 to US$ 200,000 per financial year with immediate effect. Accordingly, AD Category I banks may now allow remittance up to US$ 200,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both.

For details, please visit http://www.rbi.org.in/

(Source: A.P. (DIR Series) Circular No. 9, dated 26-9-2007)

Prepayment of External Commercial Borrowings (ECB)

RBI has increased the limit of prepayment of ECB from US$ 400 million to US$ 500 million without its prior approval, subject to compliance with the minimum average maturity period applicable to the loan.

For details, please visit http://www.rbi.org.in/

(Source: A.P. (DIR Series) Circular No. 10, dated 26-9-2007)

Overseas Direct Investment- Liberalization

RBI has liberalized the following provisions with regard to overseas investments with immediate effect:

1. **Limit for Overseas Direct Investments:** The existing limits for investment by an Indian Party in its overseas Joint Venture (JV)/Wholly-Owned Subsidiary (WOS) under the Automatic Route have been increased as under:

   (a) For companies incorporated in India or bodies created under an Act of Parliament from the existing limit of 300% of net worth to 400% of net worth, as on the date of the last audited balance sheet.

   (b) For registered partnership firms, from the existing limit of 200% of net worth to 400% of net worth, as on the date of the last audited balance sheet.

2. **Portfolio Investment by listed Indian companies:** The existing limit of investment of 35% of net worth has been increased to 50% of the net worth, as on the date of the last audited balance sheet.

The requirement of a reciprocal 10% share holding in Indian companies has also been done away with immediate effect.

As a result, listed Indian companies can now invest up to 50% of their net worth, as on the date of the last audited balance sheet in the following:

(a) Shares of listed overseas companies; and

(b) Rated bonds/ fixed income securities rated not below investment grade by accredited/ registered credit rating agencies, issued by listed overseas companies.

For details, please visit http://www.rbi.org.in/

(Source: A.P. (DIR Series) Circular No. 11, dated 26-9-2007)

Clarification on FDI in Single Brand Retail

The Government had vide Press Note No. 3 (2006 series) dated 10-2-2006 allowed FDI up to 51% in Single Brand Product Retailing subject to the following conditions:

(i) Products to be sold should be of a "Single Brand" only.

(ii) Products should be under the same brand internationally.

(iii) "Single Brand" product retailing would cover only products, which are branded during manufacturing.

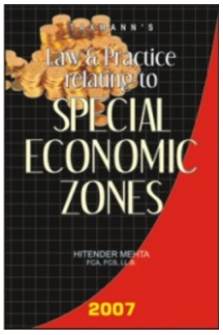
The Government has now clarified that products *"sold under the same brand internationally"* would mean that products are sold under the same brand in one or more countries other than India.

For further details, please visit: www.dipp.nic.in

(Source: DIPP Press Release dated 2-11-2007)

SPECIAL ECONOMIC ZONES

Special Economic Zones (Second Amendment) Rules, 2007



The Government has notified Special Economic Zones (Second Amendment) Rules, 2007, which provide for fixation of maximum area ceiling and minimum processing area for a multi-product Special Economic Zone (SEZ) and omission of rule relating to use of previously used plant and machinery in Domestic Tariff Area (DTA).

Maximum Area for a Multi-product SEZ fixed to 5000-hectares and Minimum Processing Area to be at least 50% of the total SEZ Area

- A Multi-product SEZ shall have a contiguous area of 1000- hectare or more but not exceeding 5000-hectares. However, if SEZ is proposed to be set up in Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himachal Pradesh, Uttaranchal, Sikkim, Jammuand, Kashmir, Goa or in a Union Territory, the area shall be 200-hectares or more.

  It may be noted that the upper ceiling of having a maximum area of 5000-hectares existed earlier also but no formal notification to this effect was issued by the Government. The Empowered Group of Ministers (EGoM) in its meeting held on 4-4-2007 had decided that the maximum area for a multi-product SEZ shall not exceed 5000-hectares.

- Further, the amended rules provide that for a multi-product SEZ at least 50% (fifty per cent) of the area shall be earmarked for developing the processing area. Earlier the ceiling for minimum processing are was 35% (thirty five percent) of the total SEZ area.

Omission of rule 18(4)(g) of the SEZ Rules, 2006

- Rule 18(4)(g) has been omitted from the SEZ Rules, 2006. The erstwhile rule 18(4)(g) provided that no proposal for setting up SEZ Unit shall be considered for the use of any plant or machinery previously used for any purpose in DTA.

- In view of the amendment, it appears that the entrepreneurs will now be permitted to use plant or machinery previously used for any purpose in DTA.

- The amendment was also required to facilitate the entrepreneurs to avail exemption under section 10AA(4) of the Income-tax Act, 1961, which otherwise could not be availed, as proposals, where use of any plant and machinery previously used in DTA was contemplated, were not considered at all.

(Source: Notification No. G.S.R. 1744(E), dated 12-10-2007)

IMPORTANT DATES WITH REGULATOR (S)
COMPLIANCE CHECKLIST
1st December 2007 - 15th January 2008

Sr. No	PARTICULARS	Sections/ Rules Clauses, etc	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
A.	**INCOME TAX**				
1	TDS from Salaries for the previous month	Section 192	Income-tax Act, 1961	7th December/ 7th January	Income-tax Authorities
2	TDS on Contractor's Bill/ Advertising/ Professional service Bills TDS collected in the previous month	Section 194-C Section 194-J	Income-tax Act, 1961	7th December/ 7th January	Income-tax Authorities
3	TDS on Rent	Section 194-I	Income-tax Act, 1961	7th December/ 7th January	Income-tax Authorities
4	Advance tax (upto 75% of advance tax payable in case of companies)	Section 208	Income-tax Act, 1961	15th December	Income-tax Authorities
B.	**EXCISE & SERVICE TAX**				
5	Pay Service Tax in Form TR-6 collected during the previous month (for companies)	Rule 6	Service Tax Rules, 1994	5th December/ 5th January	Service Tax Authorities
6	Submission of CENVAT Return	Rule 9(7)	CENVAT Rules, 2004	5th December/ 5th January	Excise Authorities
C.	**COMPANY LAW**				
7	Name availability in case of change of name or new name in Form IA (w.e.f. 19.11.2007)	Rule 4A	The Companies (Central Govt.'s) General Rules	Available for a period of 60-days + 1-time extension allowed for 30-days (on payment of 50% fees)	Registrar of Companies
8	DIN 3	Section 266E	Companies Act, 1956	Within 7 days of receipt of information from the Directors in DIN 2	Registrar of Companies
D.	**LABOUR LAWS**				
9	Monthly payment of Provident Fund dues	Paragraph 38	The Employees' Provident Funds Scheme, 1952	15th December/ 15th January	Provident Fund Authorities
10	Payment of ESI contribution for the previous month (Form S-III cash challans & S-IV cheque challans)	Regulation 31	Employees' State Insurance (Gen) Regulations, 1950	21st December	ESIC Authorities

INTELLECTUAL PROPERTY RIGHTS

Standing Committee on Commerce invites suggestions on Trade Marks (Amendment) Bill 2007

The Trade Marks (Amendment) Bill, 2007, introduced in the Lok Sabha on 23-8-2007, has been referred to the Department-related Parliamentary Standing Committee on Commerce for examination and report. The Bill seeks to amend the Trade Marks Act, 1999 (the "**Trade Marks Act**") with a view to :

(i) prescribe a period of 18 months for the registration of trade marks under Section 23 of the Trade Marks Act, in line with the provisions of the Madrid Protocol;

(ii) incorporate a new Chapter IVA in the Trade Marks Act containing enabling provisions for accession to Madrid Protocol, including empowering the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau and maintain record of international registrations;

(iii) reduce the time-period of filing a notice of opposition of published applications, from four months to three months, for speedy disposal of proceedings;

(iv) simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally in tune with international practice and modern business needs;

(v) omit chapter X of the Trade Marks Act, dealing with special provisions for textile goods.

LABOUR LAWS

Increase in Wage Ceiling from Rs. 3,500 to Rs. 10,000 for the purpose of Payment of Bonus to employees with retrospective effect from 1-4-2006

Amendment in the Payment of Bonus Act, 1965

- The Payment of Bonus Act, 1965 (the "Bonus Act") has been amended by the Payment of Bonus (Amendment) Ordinance, 2007 dated 27-10-2007 to enhance the wage ceiling for the purpose of payment of bonus to employees from Rs. 3,500 to Rs. 10,000 with retrospective effect from 1-4-2006.

For details, please visit: http://labour.nic.in/

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