

Tax & Corporate News Bulletin

Vol. IV, No. 3, August - September, 2008



From the Editor's Desk...

Dear Reader,

Amidst fall of global financial giants of the likes of Lehman Brothers, Freddie Mac, Fennie Mae, Merrill Lynch, Goldman Sach, Washington Mutual Inc., AIG, etc., the Indian economy (particularly, Indian banking sector) continued to demonstrate resoluteness to withstand the impact of turbulence in the global financial markets. The tough measures taken by the RBI, though had an impact on the overall economic growth, provided requisite strength and resilience to the banking system.

Considering the needs of the infrastructure sector, the Government liberalized the ECB norms for the infrastructure companies by raising the borrowing limit from USD 100-Mn to USD 500-Mn per financial year for rupee expenditure, which provided much needed relief to the infrastructure sector. However, the demand of the Special Economic Zones community to categorize them as 'infrastructure sector' as opposed to 'real estate sector' remains unaddressed.

To keep pace with the changing times, SEBI amended the Guidelines relating to Disclosure and Investor Protection. A series of welcome measures have been introduced to boost the investors' confidence and to bring in greater precision in the IPO process and preferential issues.

Having received the nod of the Cabinet, the Modern Company Law for Indian corporate sector is now in the offing. It seeks to enable the Indian corporate sector to operate in a regulatory environment of best international practices that foster entrepreneurship, investment and growth. Let's all hope for the best!

Yours truly,

Hitender Mehta
hitender@vaishlaw.com

Inside...

INCOME TAX

- Payment for Right to Use Customized Software is Royalty and Taxable in India
- Consideration paid for Testing of Drug is not 'Fees for Included Services'
- Conversion from Stock-in-Trade into Investment - No Tax Liability at the time of Conversion
- Penalty leviable even if assessment completed at a loss
- Payment to Dependent Agent at Arm's Length - No further Taxation in the hands of the Foreign Principal

SERVICE TAX

- Applicability of service tax on SEZ Units
- Refund of service tax on taxable services used for the purposes of exports of goods by SEZ units
- Form ST # 3 amended
- Service tax on fees collected for statutory/ sovereign duties and deposited in the Government account

EXCISE & CUSTOMS

- Annual Installed Capacity Statement
- Time limit for refund of Additional Duty of Customs

CORPORATE LAWS & SEBI

- Cabinet approves Companies Bill, 2008
- Revision of Company Forms
- SEBI amends Equity Listing Agreement
- Amendments to SEBI (DIP) Guidelines, 2000
- Revision of Pricing Norms for QIP and Preferential Allotment to QIBs
- Amendment to SEBI (ESOP and ESOS) Guidelines, 1999
- ASBA facility in Rights Issues

FEMA/ RBI

- Liberalization in ECB Policy for Infrastructure Sector
- Operationalisation of FCEBs Scheme
- Increase in advance remittance for import of services
- EEFC to be non-interest bearing current accounts

SPECIAL ECONOMIC ZONES

- Default operations approved by the BoA
- DEPB benefits on export by DTA units to SEZs

VAISH ACCOLADES

COMPLIANCE CHECK LIST

For further details,
please contact....

Ajay Vohra

ajay@vaishlaw.com

Vinay Vaish

vinay@vaishlaw.com

Bomi F. Daruwala

bomi@vaishlaw.com

For Private Circulation

INCOME TAX

Payment for Right to Use Customized Software is Royalty and Taxable in India - AAR

The Authority for Advance Ruling (AAR) in the recent case of *Airports Authority of India vs. DIT: 304 ITR 216* held that payment for license to use customized software was in the nature of royalty and, therefore, covered under Article 12 of the Indo-US Double Tax Avoidance Agreement (the 'Treaty') and taxable in India.



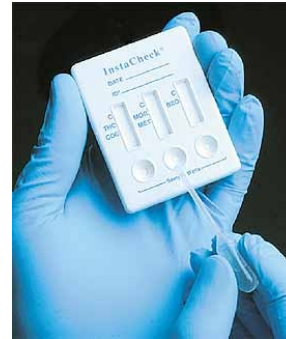
In the above case, the Airports Authority of India (the 'Applicant'), a public sector undertaking, entered into contract for procuring customized software relating to Surveillance Situation Display Data ('S-SDD'), software documentation, hardware installation and training, with Raytheon Company (the 'Vendor'). Further, the title and risk in hardware, software and documents were to be passed on to the Applicant outside India. The entire activities under the contract were also to be performed outside India by the Vendor except some support services relating to installation, site inspection, testing and training, which were to be rendered in India. The Applicant argued that the essence of the contract was outright sale of copyrighted software and hardware though there would be certain restrictions on making copies for distribution to public and further restriction on sale, transfer of ownership and end use of the software. Further, the contract between the Applicant and the Vendor provided that the software documentation furnished to the Applicant under the contract would be the property of Vendor and the Applicant would not have any right in the software, except that it can use it for operation, repair and maintenance of automation system.

The AAR observed, that there was no outright transfer of copyright or sale of disc/ floppy containing software programme under the contract and the Vendor has only granted a non-transferable and non-exclusive licence for use of software. According to the AAR the payment for use of software was royalty under Article 12 of the Treaty, being payment for use of copyright.

With regard to the installation, testing and training services, which primarily related to supply of software, the same were

held to be "included services" as per Article 12 of the treaty being ancillary and subsidiary to the enjoyment of copyright in the software and the payment therefor was held chargeable to tax in India.

Consideration paid for Testing of Drug is not 'Fees for Included Services' - AAR



The AAR in the case of a Canadian Pharma research company, *Anapharm Inc. vs. DIT (AAR No. 46 of 2008)*, held that the payment for clinical and bio-analytical services such as evaluation of bio-equivalence and comparative bioavailability of the new generic drug, does not qualify as 'fees for included services' under Article 12

of the Indo-Canadian Double Tax Avoidance Agreement ('the treaty'). The consideration for the said services was held to be business profit as per Article 7 of the treaty and in the absence of a permanent establishment of the assessee in India, the same was held to be not taxable in India.

In the above case, Anapharm Inc. (the 'Applicant'), a company incorporated in Canada, was engaged in the business of providing clinical and bio-analytical research services to assist pharmaceutical companies around the world in development of new drugs or generic copies of drugs, which were already marketed. Accordingly, the Applicant entered into agreements with some Indian pharmaceuticals companies for evaluating, on behalf of its clients, the bio-equivalence and/ or comparative bio-availability of the new generic drug vis-à-vis the reference drug which is already available in the market. These agreements were standard agreements similar to the one the Applicant has signed with other companies. The Applicant had devised its own methods/ protocols for carrying out the evaluation work and the reports produced by the Applicant were acceptable to the various regulatory authorities. Further, neither the methods/ protocols for carrying out the evaluation work nor the specimen samples of human volunteers collected during the evaluation had been made available to the client. The client had been provided only the final reports/ conclusions of the evaluation. Further, the methods/ protocols were product specific and could not be used in evaluating other generic drug and for each new drug a fresh evaluation was required to be undertaken.

It was held by the AAR that the fees received from the clients were not 'fees for included services', under Article 12 of the Treaty, as the payment of any kind made in consideration for any technical or consultancy services would be 'fees for included services', provided such services make available technical knowledge, experience, skill, know-how or process or consist of the development and transfer of technical plan or technical design. Further, the technology would be considered to have been 'made available' only when the recipient is enabled to apply that technology.

It was observed that the Applicant does not reveal as to how it conducts clinical and bio-analytical research or the inputs that have gone into it, so as to enable them to carry out those tests themselves in future and a mere broad description or indication of the type of test carried out to reach the conclusion does not enable the Applicant's client to derive requisite knowledge to conduct the tests or to develop the technique by itself.

Thus, it was held that the services provided by the Applicant do not satisfy the test of 'make available' under Article 12 of the Treaty.

Conversion from Stock-in-Trade into Investment - No Tax Liability at the time of Conversion

The Mumbai Bench of the Tribunal, in the case of *ACIT vs. Bright Star Investment Pvt. Ltd.* (ITA No. 6374/Mum/2004) held that the difference in between the market price of the shares on the date of conversion of stock-in-trade into investment, and the book value of the shares, would not be liable to tax as business income.



The assessee had converted shares earlier held as stock-in-trade, into investment at the book value shown in the books of accounts. Subsequently, the shares were sold and the assessee computed capital gains on the sale of shares which was taxable at lower rate, being in the nature of long term capital gains. The assessing officer held the difference between the market price on the date of conversion and the book value as on that date as business income and the difference between the market value on date of sale and the market value on date of conversion as capital gain.

The Tribunal held that in absence of a specific provision to deal with such a situation, the interpretation which is favourable to the assessee should be accepted and the capital gains liability, if any, would only arise at the time of sale.

Penalty leviable even if assessment completed at a loss

A three Member Bench of the Supreme Court in the case of *CIT vs. Gold Coin Health Food Pvt. Ltd.*: 304 ITR 308 held that the amendment to Explanation 4 to section 271(1)(c) was to make explicit what was otherwise implicit, i.e., that penalty can be imposed even in a case where the assessment results in a loss. Applying this test, the amendment to Explanation 4 to section 271(1)(c), though made with effect from 1st April 2003, was held to be clarificatory and, therefore, retrospective.

The Supreme Court, thus overruled the Division Bench decision in the case of *Virtual Soft Systems Ltd. vs. CIT* 289 ITR 83 wherein it was held that no penalty under section 271(1)(c) of the Act was leviable where the assessment was completed at a loss.

Payment to Dependent Agent at Arm's Length - No further Taxation in the hands of the Foreign Principal



The Bombay High Court in the case of *SET Satellite (Singapore) PTE Ltd. vs. DDIT*: 218 CTR 452 following the decision of the apex Court in the case of *DIT vs. Morgan Stanley*: 292 ITR 416 has held that where a dependent agent

of a foreign company is compensated at arm's length price, then the Dependent Agency Permanent Establishment ('DAPE') of foreign company shall have no further tax liability in India. The Court referred to the CBDT Circular No. 23 dated, 23.7.1969, wherein it was clarified that if a non-resident executes sale to Indian customer through an agent then the taxable income in respect of said transaction would be limited to profit attributable to said services of agent in India.

The Court overruled the decision of the Tribunal in the aforesaid case (reported in 106 ITD 75). The Tribunal had held that even if the dependent agent has been compensated at arm's length that did not extinguish the liability of DAPE of foreign company to tax in India, observing that taxability of dependent agent and DAPE of the foreign company are mutually exclusive, and that profit is required to be attributed to the DAPE of the foreign company on the basis of function performed, risks assumed and assets employed in India.

SERVICE TAX

Applicability of service tax on SEZ Units providing taxable service outside SEZ

Central Board of Excise and Customs (CBEC) vide Circular No. 105/08/2008-ST, dated September 16, 2008 has clarified that Special Economic Zone (SEZ) units providing services in the DTA are liable to pay service tax and have to be under the jurisdiction of the local Central Excise Authorities.



Recently, certain instances were noticed where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc. to units/ persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax authorities under the CBEC. Therefore, field formations have been asked to ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

Refund of service tax on taxable services used for the purposes of exports of goods by SEZ Units

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST, which prescribes that the refund would be allowed by the jurisdictional Deputy



Commissioner/Assistant Commissioner of Central Excise. Doubts were raised as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. It is now clarified that the refund of service tax is to be processed by the respective

jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities and file their claims.

Form ST # 3 amended

Effective from September 2, 2008, certain amendments have been introduced in the Form ST #3 (which pertains to furnishing of return under section 70 of the Finance Act, 1994) through the Service Tax (Third Amendment) Rules, 2008.

[Source: Notification No. 31/2008-ST, dated September 2, 2008]

No service tax on fees collected for statutory/ sovereign duties and deposited in the Government account

1. The Government has clarified that statutory/ sovereign duties, the fee collected for which is compulsory/ statutory and the same is deposited in the Government account, would not be liable to Service tax.
2. In case of Tobacco Board, which undertakes auctioning of tobacco and levies a fee from growers and buyers of such tobacco, which is discretionary in nature and not deposited in the consolidated fund of India but retained by the Board. The Tobacco Board is a body corporate and prepares financial statement including income/ expenditure, balance sheet etc. Hence the service provided by the Tobacco Board is not covered under the aforementioned circulars. Accordingly, the Tobacco Board is liable to pay service tax on auctioneer service provided by it for auction of tobacco.

[Source: F. No. 137/87/2008-CX.4- CBEC dated August 14, 2008]

CENTRAL EXCISE / CUSTOM

Central Excise Return – Annual Installed Capacity Statement

A new sub-rule 2A has been added to Rule 12 of the Central Excise Rules, which provides that every assessee shall submit an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the relevant financial year. In addition, the assessee would be required to furnish the detail of each of the excisable products and details of the plant and machinery with make and model, detail of electricity connection and captive power plants, if any.

The Statement is to be given in Form E.R. 7, added vide notification no. 39/2008-CX, (N.T.) by April 30th of every year. However, for the financial year 2007-08, the Statement is to be filed by 31st October for 2007-2008.

[Source: Notification no. 38 & 39/2008-CX, (N.T.), dated September 29, 2008]

Time limit for refund of Additional Duty of Customs

The Government had issued notification no. 102/2007 Customs dated September 14, 2007 to grant refund of additional duties of customs to the importer-cum-trader provided the sales tax/ Value Added Tax (VAT) is paid on sale of such goods by such importer-cum-trader. The procedure for filing the refund application of 4% additional duty of customs has been prescribed in Circular No. 6/2008 dated April 28, 2008. However, there was no time limit prescribed in the said notification for filing a refund claim.

Now, the said notification has been amended vide notification no. 93/2008 dated August 1, 2008 to prescribe the time limit for filing a refund claim within one year from the date of payment of said additional duties of customs.

CORPORATE LAWS

Cabinet approves Companies Bill, 2008

The Companies Bill, 2008 has received the nod of Union Cabinet and is now set to be tabled in the Parliament. It seeks to enable the Indian corporate sector to operate in a regulatory environment of the best international practices that foster entrepreneurship, investment and growth, and provides for :



- The basic principles for all aspects of internal governance of corporate entities and a framework of their regulation from incorporation to liquidation to winding up, in a single, comprehensive legal framework administered by the central government.
- Articulation of shareholders democracy with protection of the rights of minority stakeholders, responsible self

regulation with disclosures and accountability, substitution of government control over internal corporate processes and decisions by shareholder control.

- Easy transition of companies operating under the Companies Act, 1956 to new framework as also from one type of company to another.
- A new entity in the form of One Person Company (OPC).
- Speedy incorporation process.
- Every company to have at least one director resident in India.
- Facilitates joint ventures and relaxes restrictions limiting the number of partners in entities to a maximum 100 with no ceiling on professionals regulated by special Acts. Such professions will include lawyers, chartered accountants, company secretaries, cost and works accounts, etc.
- Recognizes CEO, CFO and Company Secretary as the Key Managerial Personnel (KMP).
- The Bill recognizes insider trading by company directors/ KMPs as an offence with criminal liability.
- Special courts to deal with offences under the bill.
- A more effective regime for inspections and investigations , laying down a minimum and maximum penalty for each offense with deterrent for repeat offences
- A revised framework for regulation of insolvency rehabilitation and winding up and liquidation of companies in a time bound manner.
- Shareholders' associations/ Group of shareholders to take part in Class Action suits
- A single forum for approval of mergers and acquisitions.
- A separate framework of enabling fair valuations in various processes.

Revision of Company Forms



The Ministry of Corporate Affairs ("MCA") has vide Notification No. 655(E) dated September 12, 2008 revised the following four e-Forms:

1. Form 20B - Form for filing Annual Return by a company having a share capital with the Registrar;
2. Form 21A Particulars of Annual Return for the company not having share capital;
3. Form 23AC Form for filing Balance Sheet and other documents with the Registrar;
4. Form 23ACA Form for filing Profit and Loss account and other documents with the Registrar.

The revised forms will come into force from September 28, 2008.

[Source: Notification No. 655(E) dated September 12, 2008]

SEBI

SEBI amends Equity Listing Agreement

SEBI has amended Equity Listing Agreement vide circular dated September 4, 2008. The highlights of the amendments are:

- *Notice period regarding rights issues (clause 16 & 19):*

In order to reduce the time duration for a rights issue, SEBI has decided to amend the SEBI (DIP) guidelines and the listing agreement. The reduction in time lines would reduce the market risk faced by an issuer and ensure faster turnaround of money for investors. There are also certain amendments to bring homogeneity in the number of days for notice period and for record date in case of rights issue.

- *“Fairness Opinion” of independent merchant banker (clause 24):*

In order to safeguard the interest of shareholders, the listed company as well as the unlisted company which are getting merged shall each be required to appoint an independent merchant banker for giving a fairness opinion on the valuation done by valuers. Further, the “Fairness opinion” of the merchant bankers shall be made available to the shareholders at the time of approving the resolution under Clause 24.

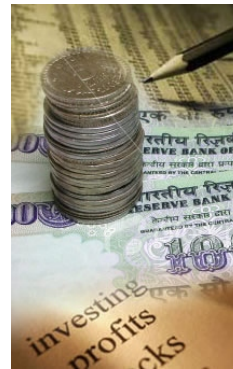
- *Submission and Publication of Financial Results (clause 41):*

In order to bring more efficiency in the disclosures of financial results, certain amendments have been made with regard to

timeline for submitting consolidated financial results to the stock exchange, publication thereof, submission and placing of limited review reports before Board/Committee, etc.

[Source: SEBI/CFD/DIL/LA/5/2008/4/09 dated September 4, 2008]

Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000



- *Reduction in timelines for rights issue*

In order to mitigate risks it has been decided by SEBI to reduce the current timelines on listed companies making rights issues.

- *Definition of Qualified Institutional Buyers (QIBs)*

Presently, Foreign Institutional Investors (FIIs) registered with the SEBI are included in the definition of QIBs. FIIs invest in securities in the primary market, either on their account or on behalf of their sub-account(s). It has been decided to exclude sub-accounts falling in the categories of “Foreign corporate” and “Foreign individual” from the definition of QIBs. Further it has been decided to include the definition of “QIB” in the definition clause of the SEBI (DIP) Guidelines.

- *Eligibility for making Qualified Institutions Placement (QIP)*

Companies, which have been listed in the preceding one year pursuant to approval scheme(s) of merger/ demerger / arrangement entered into by such companies with the companies which have been listed for more than a year in such stock exchange (s), are not able to use the QIP route for raising funds. It has been decided that such companies may take into account the listing history of the listed companies with which they have entered into the approved scheme(s) of merger/demerger/arrangement for the purpose of fulfilling one of the conditions of eligibility criteria. The condition being that the equity shares of the same class of such companies shall have been listed on the stock exchange for a period of at least one year as on the date of issuance of notice to shareholders for considering the QIP.

Further, SEBI has decided to modify the pricing guidelines for QIP and preferential allotment to QIBs.

- *Lock-in on shares on exercise of warrants issued on preferential basis*

It has been decided to subject the shares allotted on preferential basis pursuant to exercise of warrants to full lock in period of one year or three years, as the case may be, from the date of allotment of such shares. As against the previous capacity to reduce the lock in period to the extent such warrants had already been locked in.

- *Eligibility of shares for promoter's contribution and offer for sale*

Earlier only those shares which were held by share holders for a period of at least one year at the time of filling of draft offer document with SEBI were eligible to be offered for sale and to be included for the purpose of promoters contribution. It has been decided that shares acquired pursuant to a restructuring exercise approved by the High Court(s) would also be included, in lieu of business and invested capital which had been in existence for a period of more than one year prior to the restructuring exercise.

- *Filling of the offer document at SEBI regional offices*

Draft offer document of size upto Rs.50 crores as against the previous limit of 20 crores can now be filed by lead merchant bankers with such regional office of SEBI under the jurisdiction of which the registered office of the issuer company falls.

[Source: SEBI/CFD/DIL/DIP/32/2008/28/08 dated August 28, 2008]

Revision of Pricing Norms for QIP and Preferential Allotment to QIBs

SEBI has decided to allow companies to price QIPs on the basis of the average price of two weeks before the issue, against the earlier requirement of taking the higher of the average of the weekly high and low of the closing prices of the shares during the two weeks or six months preceding the relevant date. In order to align the present pricing norms to the market, SEBI Board has decided to revise the pricing norms for QIP and Preferential allotment to the following effect:

- Floor price may be based on the two weeks average for making a QIP or for making preferential allotment to QIBs.
- Relevant date for QIP shall be the date on which the Board of the company or the Committee of Directors duly



authorized by the Board of the company meets to take the decision to open QIP. No change is contemplated in relevant date for preferential allotment as the resolution for preferential allotment is valid only for 15 days as against one year for QIP.

[Source: Press Release No. 150/2008 dated August 13, 2008]

Amendment to SEBI (ESOP and ESOS) Guidelines, 1999



SEBI has amended the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 ("SEBI (ESOP & ESOS) Guidelines") in terms of which a director nominated by an institution as its

representative on the Board of Directors of a company, is eligible to participate in the ESOS of the company, if the contract/agreement entered into between the nominating institution and the director so appointed specifically provides for acceptance of ESOS of the company by such director and a copy thereof is filed with the company. There has also been a change in the accounting treatment prescribed by SEBI for options granted under the graded vesting, to bring it in line with the accounting treatment provided by ICAI in this regard. The amendments come into force with effect from August 4, 2008.

[Source: Circular No. SEBI/CFD/DIL/ESOP/4/2008/04/08 dated August 4, 2008]

Applications Supported by Blocked Amount (ASBA) facility in Rights Issues

1. In its continuous effort to make the public issue process more efficient, SEBI has introduced an additional mode of payment for applying in public issue by providing the facility of making applications through "Applications Supported by Blocked Amount" process ("ASBA process") in book built public issues vide its circular dated July 30, 2008. It has now been decided to enable process of ASBA in Rights Issues on a pilot basis.
2. ASBA facility in rights issues will be available to all shareholders of the issuer company as on the record date subject to certain qualifications mentioned in the circular dated September 25, 2008. ASBA facility will thus not be available to non- shareholders. It will co-exist with the

current process, wherein cheque/ demand draft is used as a mode of payment.

3. On pilot basis, it has been decided to include ASBA in rights issues of Tata Motors Ltd. and Sadhana Nitro Chemicals Ltd. which are opening on September 29, 2008.
4. All other instructions given in the circular dated July 30, 2008 shall continue to apply, to the extent relevant.

[Source: SEBI/CFD/DIL/2008/ 25 /09 September 25, 2008]

FEMA/ RBI

Liberalization in ECB Policy for Infrastructure Sector

1. Hitherto, the borrowers in the infrastructure sector were allowed to avail External Commercial Borrowings (ECBs) up to USD 100 million per financial year for Rupee expenditure for permissible end-uses under the Approval Route, which limit has been raised to USD 500 million per financial year with effect from September 22, 2008. However, ECB in excess of USD 100 million should have a minimum average maturity period of 7 years.
2. Consequently, the all-in-cost ceilings for ECBs have been modified as under:



Average Maturity Period	All-in-Cost ceilings over 6 months LIBOR	
	Existing	Revised
Three years and up to five years	200 bps	200 bps
More than five years and up to seven years	350 bps	350 bps
More than seven years	350 bps	450 bps
* for the respective currency of borrowing or applicable benchmark		

[Source: A. P. (DIR Series) Circular No. 16 dated September 22, 2008]

Operationalisation of FCEBs Scheme



In order to facilitate the issue of Foreign Currency Exchangeable Bonds (FCEBs) by Indian companies, it has been decided to operationalize the FCEB Scheme. The Issue of FCEBs shall require the prior approval of the RBI. The Reporting procedure for FCEBs shall be same as per the extant ECB Policy. The scheme comes into force w.e.f. September 23, 2008.

The Issue of FCEBs Scheme, 2008 was notified by the Ministry of Finance, Department of Economic Affairs vide Notification G.S.R.89 (E) dated February 15, 2008.

[Source: RBI/2008-09/192 A.P. (DIR Series) Circular No.17 dated September 23, 2008]

Increase in advance remittance for import of services to USD 500,000



The Reserve Bank of India ("RBI") has decided to raise the limit of USD 100,000 for advance remittance for all admissible current account transactions for import of services without bank guarantee

to USD 500,000 or its equivalent. Where the amount of advance exceeds USD 500,000 or its equivalent, a guarantee from a bank of international repute situated outside India, or a guarantee from an AD Category I bank in India, if such a guarantee is issued against the counter-guarantee of a bank of international repute situated outside India, should be obtained from the overseas.

[Source: RBI/2008-09/158 A.P. (DIR Series) Circular No. 15 dated September 8, 2008]

EEFC to be non-interest bearing current accounts

All exporters, as a temporary measure, were permitted to earn interest on Exchange Earners' Foreign Currency (EEFC)

Accounts to the extent of outstanding balances of USD 1 million per exporter. The permission was valid up to October 31, 2008 and was subject to review. The measure has since been reviewed in consultation with the Government of India and it has been decided to withdraw the facility from November 1, 2008. Accordingly, with effect from November 1, 2008, all EEFC accounts shall only be permitted to be opened and maintained in the form of non-interest bearing current accounts.

[Source: RBI/2008-09/118 A. P. (DIR Series) Circular No. 04, dated August 04, 2008]

SPECIAL ECONOMIC ZONES

Default operations approved by the BoA

The Ministry of Commerce and Industry, Department of Commerce (SEZ Section) has, through a Circular dated August 22, 2008, clarified that the default operations



(as provided in the Circular) may be carried out by the Developer/ Co-developer immediately upon Notification of the SEZ.

[Source: F. No. F. 1/153/2007-SEZ dated August 22, 2008]

DEPB benefits on export by DTA units to SEZs

An exporter shall also be entitled for DEPB benefit in case payment is made in Indian Rupees by SEZ Developer/ Co-Developer for supplies received w.e.f February 6, 2006.

[Source: Notification No 42 (Re-2008)/2004-2009, dated September 18, 2008]

VAISH ACCOLADES

Rupesh Jain and **Rohit Jain** were invited to address workshop on “Direct Taxes” organized by the CFO World & All India Chartered Accountants Society (AICAS) at New Delhi.

Ajay Vohra, Managing Partner, was invited by ASSOCHAM to address its 5th International Tax Conference held on 16th to 17th September, 2008 at New Delhi. He spoke on the sub-theme “Recent Developments in international Taxation –Indian Judicial Decisions”.

Bomi Daruwala, Partner was invited to address ICSI-NIRC seminar on “Decoding the Takeover Code Recent Case Studies” held on August 30, 2008 at New Delhi. He shared his experience during the Ranbaxy-Daiichi Sankyo takeover transaction.

Satwinder Singh, **Hitender Mehta** and **Manish Tully** were invited to address ICSI-NIRC Punjab State Conference on “Corporate Compliance & Management Exploring New Vistas” held from 20th to 21st September 2008 at Ludhiana (Punjab). Their respective topics of presentation were “Private Equity A Catalyst to Corporate Growth”, “Due Diligence” and “External Commercial Borrowings”.

Hitender Mehta, **Vijay Pal Dalmia** and **NPS Chawla** were invited to address ICSI-NIRC Rajasthan State Conference on “Globalization of Trade and Professional Services: Risks & Returns” held from 13th to 14th September 2008 at Bhilwara (Rajasthan). Their respective topics of presentation were “Corporate Compliance Management & Due Diligence”, “Intellectual Property Rights” and “Corporate Restructuring”.

Hitender Mehta was invited to address Executive Development Program on “Corporate Compliance Management & Due Diligence” organized jointly by the institute of Company Secretaries of India (ICSI) and Ministry of Heavy Industries (Department of Public Sector Enterprises) on August 22, 2008 at New Delhi.

Hitender Mehta was invited by PHD Chamber of Commerce to address its conference on “Legal Due Diligence for Acquiring Business” held on August 1, 2008 at New Delhi. His topic was “Practical Tips for conducting Due Diligence & Experience Sharing”.

Hitender Mehta contributed an article titled “Special Economic Zones in India - Risks & Returns” under the Guest Column of the monthly Newsletter (August 2008 issue) of DTOS Limited, Mauritius.

IMPORTANT DATES WITH REGULATOR (S)

COMPLIANCE CHECKLIST

September - October, 2008

Sr. No	PARTICULARS	Sections/ Rules Clauses, etc	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
A. INCOME TAX					
1	Income Tax Return along with Tax Audit Report (A.Y. 2008-09)	Section 139	Income-tax Act, 1961	September 30, 2008	Income-tax Authorities
2	Annual Return of Fringe Benefit Tax for Companies	Section 115 WD & Rule 12	Income-tax Rules, 1962	September 30, 2008	Income-tax Authorities
3	Deposit TDS from salaries	Section 192	Income-tax Act, 1961	October 7, 2008	Income-tax Authorities
4	Deposit TDS from Contractors' bill/ Professional services bills	Section 194C, 194J	Income-tax Act, 1961	October 7, 2008	Income-tax Authorities
5	Quarterly Statement of TDS in Form 27Q (Payment to non-residents)	Rule 37A	Income-tax Rules, 1962	October 14, 2008	Income-tax Authorities
6	Quarterly statement of TDS in Form 24Q (Salaries)	Rule 31A	Income-tax Rules, 1962	October 15, 2008	Income-tax Authorities
7	Quarterly statement of TDS in Form 26Q (Other than Salaries)	Rule 31A	Income-tax Rules, 1962	October 15, 2008	Income-tax Authorities
8	Issue of TDS Certificate in Form 16A to vendors (with respect to TDS deducted in the previous month)	Section 203	Income-tax Act, 1961	October 31, 2008	Income-tax Authorities
B. CENTRAL EXCISE & SERVICE TAX					
9	Pay Service Tax in Form TR-6, collected during the previous month by persons other than individuals, proprietors and partnership firms	Rule 6	Service Tax Rules, 1994	October 5, 2008	Service Tax Authorities
10	Pay excise duty on the goods removed from the factory or the warehouse during previous month	Rule 8(1)	Central Excise Rules, 2002	October 5, 2008	Excise Authorities
11	Submission of monthly Return	Rule 9(7)	Cenvat Credit Rules, 2004	October 10, 2008	Excise Authorities
12	Submission of half yearly return in Form ST-3 or ST-3A along with copies of form TR-6 (in triplicate), for the months covered in the half year	Rule 7	Service Tax Rules, 1994	October 25, 2008	Service Tax Authorities
13	Submission of half yearly return (by the output service provider)	Rule 9(9)	Cenvat Credit Rules, 2004	October 31, 2008	Excise Authorities

C. SEBI & CORPORATE LAWS					
14	Submission of Compliance Report for quarter ended 30th September 2008	Clause 49	Listing Agreement	October 14, 2008	Stock Exchange
15	Submission of statement of shareholding pattern as at the end of the previous quarter	Clause 35	Listing Agreement	October 21, 2008	Stock Exchange
16	Submission of audited/ un-audited quarterly financial results	Clause 41	Listing Agreement	October 31, 2008	Stock Exchange
17	Intimation of date and purpose of Board meeting for considering financial results	Clause 41	Listing Agreement	7 days in advance	Stock Exchange
18	Issue of press release about Board meeting to take on record un-audited quarterly results	Clause 41	Listing Agreement	Immediately on informing the stock exchanges	Published in one national and one regional newspaper
19	Filing of balance Sheet and Profit and Loss Account for the year ended 31st March 2008	Section 220	Companies Act, 1956	Within 30-days from the date of AGM or 30th September, whichever is earlier	Registrar of Companies
D. LABOUR LAWS					
20	Pay monthly Provident Fund dues	Paragraph 38 of Employees' Provident Funds Scheme, 1952 Exempted Scheme	a) Employees' Provident Funds and Misc. Provisions Act, 1952 b) Section 418 of the Companies Act, 1956	October 15, 2008	Provident Fund Authorities Trustees of Provident Fund
21	Pay ESI contribution for the previous month	Regulation 31	Employees' State Insurance Act, 1948 and Employees' State Insurance (Gen.) Regulations, 1950	October 21, 2008	ESI Authorities

Sincerely Yours ...

Heartiest Congratulation to your esteemed organization for acting as exclusive legal advisors to Ranbaxy deal of such high magnitude.

Thanks for publishing and circulating such a great news letter periodically. We found it highly useful, informative and precise to update us on latest happening in tax and corporate world.

Girish Kandpal
 Addl. V.P. (Taxation)
Ansal API

.....

This newsletter is very interesting and contains the news on the largest ever deal in Indian Pharmaceuticals Industry which has been handled by your firm.

Best regards

Picharn Sukparangsee
Siam City Law Offices Limited
 Bangkok, Thailand

.....

Taxmann's "Law & Practice relating to Special Economic Zones" : 2nd Edition



TAXMANN'S
Law & Practice relating to
SPECIAL ECONOMIC ZONES
HITENDER MEHTA

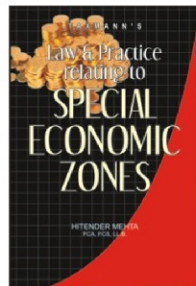
You'll wonder how you managed without it

Have you ever wished there was one up-to-date source covering the essential information relating to Special Economic Zones in India? Taxmann's brand new publication titled "Law & Practice relating to Special Economic Zones" contains comprehensive coverage of practical aspects and related legal issues on (i) Setting up SEZ; (ii) Setting up Units (iii) Fiscal and other incentives to Developers and Entrepreneurs. Besides, it dwells light on the ideology behind Special Economic Zones in India and salient features of the scheme of SEZ in a crisp and pointed manner followed by comprehensive section-by-section commentary on SEZ Act, 2005 read with SEZ Rules 2006. Flow charts have been used at places to make it fairly easy to understand for the readers.

In addition, the book contains special write-ups on –

- ◆ Organic perspective
- ◆ FEMA perspective
- ◆ Direct-tax related issues
- ◆ Indirect tax related issues
- ◆ Stamp duty issues
- ◆ Petroleum, Chemicals and Petrochemical Investment Regions (Super SEZs!!!)

2nd Edition
Releasing soon



TAXMANN'S
Law & Practice relating to
SPECIAL ECONOMIC ZONES
HITENDER MEHTA


Have Your Own Counsel

This book is an ideal reference and practical user manual for the companies (desirous of setting up SEZs or Units therein), business managers, legal and management consultants, Chartered Accountants, Company Secretaries, Cost & Works Accountants and students pursuing related professional courses. In the book, the complicated issues have been explained with an analytical approach.

Besides clearing doubts on various issues, this book will help the Developers and the Entrepreneurs as a guide navigating them right from business structure planning, agreements, filing of applications, appearance before the Authorities to compliance management under various applicable laws as well as statutory requirements relating to quarterly/ annual filing of information with the Authorities and other post setting-up issues.

Using this book will certainly prove to be a time and cost saving effort. This book gives you the complete picture of the SEZ Act and the corresponding statutory enactments in India and comprehensive analysis of the relevant legal provisions at one place.

The carefully done index allows rapid and accurate access to precise information.



Hitender Mehta,
FCA, FCS, LL.B.
Head,
Vaish Associates-Gurgaon
Corporate, Tax & Business
Advisory Law Firm



Disclaimer:

While every care has been taken in the preparation of this News Bulletin to ensure its accuracy at the time of publication, Vaish Associates assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this bulletin nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter.

We may be contacted at:

DELHI

Flat Nos. 5-7
10 Hailey Road,
New Delhi - 110001, India
Phone: +91-11-42492525
Fax: +91-11-23320484
delhi@vaishlaw.com

MUMBAI

DGP House, Ground Floor,
88C, Old Prabhadevi Road,
Mumbai - 400 025, India
Phone: +91-22-42134101/24384101
Fax: +91-22-24384103
mumbai@vaishlaw.com

GURGAON

803, Tower A, Signature Towers
South City-I, NH-8,
Gurgaon - 122001, India
Phone: +91-124-4541000
Fax: +91-124-4541010
gurgaon@vaishlaw.com

© Vaish Associates, 2008

Editor: Hitender Mehta

Editorial Team: Bomi F. Daruwalla, Hemant Puthran, Rupa Radhakrishnan, Rupesh Jain, Sachit Jolly, Varsha Yadav