

Tax & Corporate News Bulletin

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Corporate, Tax and Business Advisory Law Firm

Dear reader,

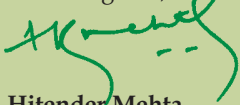
The Ministry of Company Affairs (MCA) recently handed out series of good news in the form of pragmatic actions and business friendly developments.

The big news was the completion of national roll out of MCA-21, an ambitious e-governance project of the MCA. With the office of Registrar of Companies, Jammu & Kashmir going live of 4th August 2006, the national roll out of MCA-21 stands accomplished. Further, with effect from 16.09.2006, the Government has made e-filing of forms under Companies Act, 1956 mandatory alongwith digital signature certificates. From this date, all transactions relating to filing of documents under Companies Act, 1956 will be in electronic mode only. The MCA deserves all compliments for accomplishing this feat in an effective and time bound manner.

Further, the MCA seems to have completed its homework on Limited Liability Partnership (LLP) Bill. It is expected to be introduced in the winter session of Parliament. Besides, the New Company Law is in advance stages of finalization and is likely to see the light of the day soon.

However, on VAT, there has been a setback. The much-awaited phase out of central sales tax (CST) would now begin from 01.04.2007 against the earlier planned date of 01.10.2006. The VAT Panel has taken a view that the phase out of CST would begin from 01.04.2007. However, the phase out would be from 4% to 2% and not on 4-3-2 pattern as planned earlier. Some may see it as an indication of further delay in introduction of national VAT regime.

Warm regards,



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For Private Circulation

CORPORATE LAWS

MCA-21 Update

E-filing with Digital Signature Certificate made mandatory

With effect from 16.09.2006, e-filing of documents under Companies Act, 1956 has been made mandatory with digital signature certificates. From this date, all transactions relating to filing of documents under Companies Act, 1956 will be in the electronic mode only.

The Ministry has revamped its website portal www.mca.gov.in

Important changes include the **Annual Filing Corner** and the **DIN corner** which display the following information:

1. New Form 23ACA for submission of Profit and Loss Account.
2. New Form 66 for filing Compliance Certificate.
3. Online intimation of Director Identification Number (DIN) of all Directors on Board of Directors by Companies in DIN 3.
4. Changes in the original DIN application DIN 4.
5. Attachments to e-forms by converting the text or excel files into PDF viz., PDF Converter.
6. Opening of Temporary Facilitation Offices at Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore, Ahmadabad, Pune, Kanpur and Jalandhar.

Annual Filing Corner -An Overview

As a part of Annual Filing, with effect from 18.09.2006 companies incorporated under the Companies Act, 1956 are required to file the following documents along with the e-Forms with the Registrar of Companies (RoC):

SN.	Document	e-Form
1	Balance Sheet (by all companies)	23AC
2	Profit and Loss Account (by all companies)	23ACA
3	Annual Return (by companies having share capital)	20B
4	Annual Return (by companies without share capital)	21A
5	Compliance Certificate (by companies having paid up capital between INR 1-Mn. and INR 20-Mn.)	66

Important Points to Remember

- The Balance Sheet and the Profit and Loss Accounts are to be filed as two separate documents with different e-forms;
- Each e-form along with the relevant attachment should be less than 2.5 MB.
- As a matter of practice, the Annual Return, the Balance Sheet and the Profit and Loss Account are filed as attachments to the respective e-forms. So far, the users have been filing the attachments as scanned images of these documents. The scanned copy considerably increases the size of the document besides being more expensive. It is advised to use the text file/ excel sheets as such and convert the same into PDF file by using the PDF converter (the software is available on the portal for a registered user without any charge) and upload these attachments as PDF documents.

How to do 'e-filing'

The companies can do e-filing in three different ways:

- The company representative can upload the e-forms from the MCA21 portal through the Annual Filing Process' link (after registering oneself as a user of the portal) at his convenience from his office/ home. This is the most convenient way for e-filing.
- The company representative can prepare the e-form following the guidelines, copy them in a CD and go to the nearest Temporary Facilitation Offices (TFOs) being opened at Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore, Ahmadabad, Pune, Kanpur and Jalandhar for the purpose of accepting Annual Filings e-Forms.
- During the normal days, the TFO staff will help the company representative to upload the form and generate a Challan. During last 10 days of October and November, CDs will be collected and an acknowledgment given. The files will be uploaded into the system subsequently and the company will have to download the challan from the link provided at the Annual Filing Corner of the portal after two working days of the submission. At Other locations where TFO's/ Collection Centre are not being opened, the e-Forms will be accepted at the existing Registrar's Front Offices (RFO).

- The company representative can also contact any of the Certified Filing Centres (CFCs) for the Annual Filing of e-Forms by paying the service charges to the CFCs. The details about the CFCs are available under the 'CFC Corner' on the MCA21 Portal.

Compliance requirements after allotment of the Director Identification Number

1. The director, to whom a Director Identification Number (DIN) is allotted, is required to inform the companies, on which one is a Director, about the DIN allotted to him/ her in Form DIN-2 within a period of one month of allotment of the DIN.
2. The companies, thereafter, are required to inform the DINs of the Directors on their Boards to the RoC in Form DIN-3 within a period of seven days after receipt of information to this effect from the Directors. This information is to be sent by the companies to the RoCs on-line in a paperless mode.

Provision has also been made for incorporating any changes in the personal particulars of a Director, including his address, after he has submitted the information initially in Form DIN-1. The required changes are to be intimated to the Government of India [Regional Director (Northern Region) at Noida] in Form DIN-4 in manual mode as in the case of Form DIN-1.

FEMA/ RBI/ FOREIGN TRADE POLICY

Big leap towards Fuller Capital Account Convertibility in the offing



On September 1, 2006, the Reserve Bank of India ('RBI') released the Report of the Committee on Fuller Capital Account Convertibility on its website (www.rbi.org.in)

The Committee, chaired by Shri S.S. Tarapore, was set up by the RBI in consultation with the Government of India to revisit the subject of fuller capital account convertibility in the context of the

progress in economic reforms, the stability of the external and financial sectors, accelerated growth and global integration.

The Committee has proposed for India's shifting to fuller capital account convertibility in three phases, over a period of five years.

Some of the important recommendations given by the Committee are as under:

- The facility for Indian individuals, who are currently allowed to freely remit up to USD 25,000 per calendar year, to be raised to USD 50,000 in phase I, USD 100,000 in phase II and USD 200,000 in phase III;
- Non resident corporates be allowed to invest in the Indian stock markets through SEBI-registered entities, including mutual funds and portfolio management schemes;
- The limit for investing in the overseas corporates be raised to 400% of the Indian investing company's net worth, from the existing 200%;
- The norms on the External Commercial Borrowings (ECBs) to be eased out, viz. companies can raise ECBs up to USD 1 billion by phase III without any prior regulatory approval and no ceiling on the long-term and rupee-denominated ECBs;
- Foreign companies can raise rupee loans, bonds in India;
- Banks can raise up to 100% of their capital through ECBs in phase III;
- Industrial houses to hold equity stakes in Indian banks or to promote new banks;

The Committee has also suggested certain restrictions, such as:

- Special tax concessions for Mauritius-based entities to go;
- The FIIs should be prohibited from investing through Participatory Notes (PNs) and that the existing PNs should be phased out completely within one year, by providing the PN holders with an exit route;
- The tax exemptions currently enjoyed by the NRIs on the interest on bank deposits, be stopped;

The RBI has formed an internal committee to examine these recommendations vis-à-vis the

existing regulations and also to suggest measures to ease the rupee convertibility, by December 2006.

The recommendations seek to help achieve greater competitiveness for the Indian companies in expanding overseas.

Further, relaxation in the ECB guidelines, both in terms of end use and the ceilings, would ensure better accessibility to the Indian corporate to foreign debt as a cheaper alternative. This would also remove the so called 'protective regime' as regards domestic banks and financial institutions through imposition of end-use restrictions and interest rate caps. Further, allowing Indian banks to borrow from overseas would facilitate convergence between the interest rates regime in the domestic and the international debt markets.

From the foreign investors' viewpoint, opening up of the capital markets and the Indian debt markets would mean an attractive source of capital.

Hopefully, the disparities between different classes of investors such as NRIs versus FIIs, would be ironed out ensuring a level playing field for all the investors.

The Committee has suggested restrictions on special tax concessions to Mauritius-based entities under the bilateral tax treaty.

However, the Supreme Court in its ruling in 2003 on India-Mauritius Treaty had clearly stated that the tax treaty is a prerogative of the Union Government in facilitating and expanding international trade. Further, any such restrictions on special tax concessions, without the corresponding reforms in the domestic tax laws, may have repercussion on the country's economy.

As regards the recommendation to abolish PNs, the Committee appears to be influenced by the RBI's perspective on PNs. The intention appears to ensure more transparency into the types of capital flowing into the country through the PNs. Unless the FII regime is significantly liberalized to facilitate participation by any eligible investor, subject however to strong KYC requirements, such an abolition could have serious implications on the foreign investment flow into the country.

[Source: RBI Press Release 2006-07/ 320]

Overseas Direct Investment by entities in the Financial Sector

Indian entities investing in entities engaged in financial services activities overseas are required to comply with the additional conditions laid down in Notification No. FEMA120/RB-2004 dated July 7, 2004 ("the Notification") relating to Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004, as amended from time to time.

Presently, entities engaged in financial services activities in India making investment in non-financial services activities overseas are not required to comply with the additional conditions mentioned in Regulation 7 of the Notification.

With a view to assess the impact of the overseas operations of such entities on a consolidated basis, it has been decided that regulated entities in financial sector in India investing overseas in any activity will also have to comply with the conditions stipulated in Regulation 7 of the Notification *ibid*.

Further, it is clarified that trading in Commodities Exchanges overseas and setting up JV/ WOS for trading in Overseas Commodities Exchanges will be reckoned as financial services activity and will require clearance from the Forward Markets Commission (FMC). The FMC has recently put in place guidelines for allowing FMC registered members of Commodity Exchanges to undertake commodity related activities abroad. Indian entities desirous of setting up of JV/ WOS overseas for trading in overseas commodities exchanges may, therefore, approach the FMC for regulatory clearance.

Unregulated Indian entities engaged in the financial services activities in India may invest in non-financial sector activities overseas subject to Regulation 6 of the Notification *ibid* and are not required to comply with the additional conditions mentioned in Regulation 7 of the Notification.

[Source: RBI/2006-07/ 125 A. P. (DIR Series) Circular No. 6 dated 06.09.2006]

SEBI

Eligibility Criteria Enlarged for Consideration of Application for Grant of Certificate as Foreign Institutional Investors

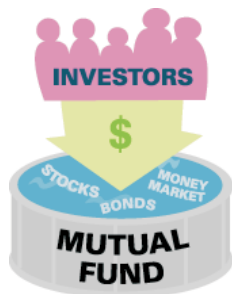
SEBI Foreign Institutional Investors (FII) (Second Amendment) Regulations, 2006 have introduced substantial and procedural changes to the SEBI FIIs Regulations, 1995, as follows:

- ❖ The eligibility criteria for consideration of application for grant of certificate now includes:
 - (a) the insurance company or reinsurance company [Regulation 6(1)(d)(i)]
 - (b) an International or Multilateral Organisation or an agency thereof or a Foreign Government Agency or a Foreign Central Bank [Regulation 6(1) (d) (i) (ia)]
 - (c) investment manager or advisor [Regulation 6 (1) (d) (ii)]
- ❖ The application for registration as Sub-Account shall be made in **Form AA**, instead of the earlier Form A. [Regulation 12 (3)]
- ❖ Consequentially, both the applicant and the FII have to submit the joint undertakings as prescribed under Form AA of the First Schedule. [Regulation 13 (1) (e)]

A revised Form A has replaced its earlier version in the First Schedule.

[Source: Notification No. SO No. 1332 (E) dated 21.09.2006]

Investment in ADRs/ GDRs/ Foreign Securities and overseas Exchange Traded Funds by Indian Mutual Funds



Securities and Exchange Board of India (SEBI) vide its Circular no. SEBI/ IMD/ CIR No. 7/73202/06 dated August 2, 2006 on Consolidation, has prescribed guidelines for investment by mutual funds in ADRs/ GDRs/ foreign securities.

The Circular provides clarity on the following key aspects:

- (i) Conditions relating to investment in ADRs/ GDRs/ foreign securities;

- (ii) Conditions for investment in Overseas Exchange Traded Funds (ETFs) and eligibility thereof;
- (iii) Conditions such as appointment of dedicated fund manager, due diligence, disclosure to be made in the Schemes;
- (iv) Guidelines relating to investment by existing schemes, reporting to trustees, review of performance, reporting requirements, etc.

With the introduction of this Circular, previous SEBI circulars pertaining to investment by mutual funds in ADRs/ GDRs/ foreign securities stand withdrawn:

Amendment to SEBI Takeover Regulations

SEBI has notified SEBI (Substantial Acquisition of Shares & Takeovers) (Second Amendment) Regulations, 2006, which provides for upward revision fees as under:

- (i) Fees under Regulation 3(5) pertaining to submission of Report to SEBI [under regulation 3(4)] increased to INR 25,000 from INR 10,000.
- (ii) Fees under Regulation 4(3) pertaining to exemption application to SEBI [under clause 1 of regulation 3(1)] increased to INR 100,000 from existing INR 25,000.
- (iii) Fees under Regulation 18(3) to be deposited alongwith the filing of draft letter of offer to SEBI under regulation 18(1) increased from INR 50,000 to fees based on offer size.

[Source: Notification No. SO No. 1330 (E) dated 21.09.2006]

Amendment to SEBI (Buy-back of Securities) Regulations

SEBI has notified SEBI (Buy-back of Securities) Regulations, 2006 which provide that every merchant banker shall while submitting the offer document or a copy of the public announcement to the Board, pay fees as set out below:-

Offer size	Fee (Rs.) Revised	Fee (Rs.) Earlier
Less than or equal to one crore rupees	1,00,000	25,000
More than one crore rupees, but less than or equal to five crore rupees	2,00,000	25,000
More than five crore rupees, but less than or equal to ten crore rupees	3,00,000	50,000
More than ten crore rupees	0.5% of the offer size	As per slabs specified

Mandatory requirement of Permanent Account Number (PAN) - Deadline extended to 31st December 2006

SEBI has advised Custodians to verify the PAN details of the institutional clients with the original PAN card and provide copy of such verified PAN details to the certified brokers. This direction would be applicable in respect of institutional clients, namely, FIIs, MFs, VCFs, FVCIs, Scheduled Commercial Banks, Multilateral and Bilateral Development Financial Institutions, State Industrial Development Corporations, Insurance Companies registered with IRDA and Public Financial Institution as defined under section 4A of the Companies Act, 1956.

In view of practical difficulties expressed by various market participants in adhering to the present deadline of September 30, 2006, the deadline has been extended to December 31, 2006, as a one time relief.

[Source: Circular No. MRD/DoP/Dep/SE/Cir-13/06 dated 26.09.2006]

INCOME TAX

AAR Ruling on Residential Status of Employees deputed outside India

In its recent decision in *British Gas (I) (P) Ltd. vs. Commissioner o Income Tax 204 CTR 177*, the Authority for Advance Rulings ("AAR") has held that Indian citizens posted abroad on deputation are not 'resident' for the purposes of Income-tax, if they do not stay in India for a period aggregating to 182 days or more in the relevant year.

Facts: An Indian citizen was employed by an Indian company in 2002. Later, he was deputed on assignment to the U.K. for two years with effect from July 1, 2005. The assessee contended that since he would be spending less than 182 days in India in financial year 2005-06, he would not be a 'resident' by virtue of clause (a) of Explanation to section 6(1) of the Income Tax Act, 1961 (the "Act").

Relevant Provisions: Section 6(1) of the Act provides that an individual will be 'resident' in India in any previous year if he is in India for period(s) amounting to -

- a. 182 days or more in that year; or
- b. 60 days or more in that year and he has been in India for period(s) amounting to 365 days or more within the four years preceding that year.

Clause (a) of the Explanation to section 6(1) of the Act provides an exception in the case of an Indian citizen who leaves India in any previous year "for the purpose of employment outside India" by extending the period of 60 days to 182-days.

Decision: The AAR rejected the Revenue's contention that since the Indian citizen was already in employment, he cannot be said to leave India for employment so as to become entitled to the benefit of the extended period. The AAR observed that the Explanation postulates the requirement of leaving India "for the purposes of employment outside India" and not "for employment outside India" and an individual need not be an unemployed person who leaves India for employment outside India in order that the Explanation applies to him.

Withholding Tax Rates Changes in Indo-Japan DTAA

The tax rates under the Indo-Japan Double Taxation Avoidance Agreement (DTAA) relating to dividend, interest, royalty and fee for technical services have been reduced vide Notification No. S.O. 1136(E) dated July 19, 2006 as under:

Income		Previous Rate (%)	Amended Rate (%)
Dividend		15	10
Interest	Beneficial owner is a bank	10	10
	Other cases	15	10
Royalty and fees for technical services		20	10

The aforesaid rates, insofar as India is concerned, shall be applicable in respect of the income of the aforesaid nature arising on or after 1.4.2007.

SERVICE TAX

Compulsory payment of service tax through Internet banking by certain specified assesses

With effect from 1st October 2006, the following category of assesses shall deposit the service tax liable to be paid by them electronically, through internet banking:

- ❖ Who has paid service tax of Rs. 50,00,000/- (Rupees Fifty Lakh) or above in the preceding financial year; or
- ❖ Who has already paid service tax of Rs. 50,00,000/- (Rupees Fifty Lakh) in the current financial year.

[Source: Notification no. 27/2006 dated 21.09.2006]

IMPORTANT DATES WITH REGULATOR (S) COMPLIANCE CHECKLIST October 2006

Sr. No	PARTICULARS	Sections/ Rules/ Clauses, etc	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
A. INCOME TAX					
1	Deposit TDS on Salaries/Contractors/ Professional Services/ Rent	Section 192/194C/ 194J/194I	Income-tax Act, 1961	Within 7 days of the following month	Income-tax Authorities
B. EXCISE & SERVICE TAX					
2	Submission of monthly CENVAT Return	Rule 9(7)	CENVAT Rules, 2004	Within 10 days of the following month	Excise Authorities
3	Deposit Service Tax in Form TR-6, collected during the previous month (Corporate assessee)	Rule 6	Service Tax Rules, 1994	Within 5 days of the following month	Service tax Authorities
4	Half yearly return in Form ST-3/3A (Other than Input Service Distributor)	Rule 7	Service Tax Rules, 1994	By 25th day of the end of the Half year	Service tax Authorities
C. COMPANY LAW					
5	Filing of Balance sheet, Profit & Loss Account together with Directors' and Auditors' Report, Form 23AC and Form 23 ACA	Section 220	The Companies Act, 1956	Within 30 days from the date of when the same are laid before the AGM	Registrar of Companies
6	Annual Return together with Form 20B or 21A as the case may be.	Section 159	The Companies Act, 1956	Within 60 days from the date on which its annual general meeting	Registrar of Companies
7	Director Identification Number [DIN 3]	Section 266E	The Companies Act, 1956	Within 7 days of receipt of information from	Registrar of Companies
D. SEBI & STOCK EXCHANGES					
8	Quarterly submission of Shareholding pattern	Clause 35	Listing Agreement with Stock Exchange	Within 21 days from the end of quarter (w.e.f. June 2006 quarter)	Concerned Stock Exchange(s)
9	Submission of Half yearly Compliance Certificate	Clause 47	Listing Agreement with Stock Exchange	Within 24 hrs of receipt of Certificate	Stock Exchange(s) where the company is listed
10	Quarterly Corporate Governance Compliance Certificate	Clause 49	Listing Agreement with Stock Exchange	Within 15 days from the end of quarter	Stock Exchange(s) where the company is listed

ACCOLADES

ASSOCHAM International Tax Conference



Ajay Vohra addressing the Conference

Ajay Vohra, Managing Partner, made a presentation on “Recent India Case laws/ rulings on International Tax/treaties” on 29 August, 2006 at the 3rd International Tax Conference organised by ASSOCHAM at New

Delhi. In his presentation, he dealt with recent Tribunal judgment in the case of PanAmSat (ITA No. 1796/Del/2001) and Advance Ruling in the case of Morgan Stanley Inc. (284 ITR 260)



Ruchira Chaudhary and R. Sekar, Jt. Secy. (TRU), Ministry of Finance at the Conference

Ruchira Chaudhary made a presentation on ‘Service Tax implications on provision of cross-border services’ on 29 August, 2006 at the 3rd International Tax Conference organised by ASSOCHAM at New Delhi. While highlighting the legal position with regard to export and import of services, she deliberated upon various

situations which would have service tax implication on importers and exporters of services. During her presentation, she also raised issues concerning non-availability of rebate claim to bona fide exporters, ambiguity in the meaning of ‘delivery and use of services outside India’, etc.

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 herein. 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.

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HAPPENINGS AT VAISH

Team Vaish At Udaipur

As a follow through of the previous team building exercise held at Jim Corbett Park last year, the entire Vaish Team undertook yet another team-building quest



in the beautiful lake city of Udaipur, Rajasthan. The exercise was conducted by *Destination Outdoors*, the professional corporate trainers and outdoor experts. The workshop emphasized various team values and effective techniques of improving communication and efficiency at workplace through activities designed for experiential learning. This experience accentuated some crucial points for improvement and motivated the team to strive for higher goals.

SINCERELY YOURS ...

The new bulletin is very well compiled and the presentation is very tempting for a reader to chew and digest the information provided in it. The different sections are important in themselves and well compartmentalized.

...Anil K. Agarwal, President, ASSOCHAM

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