

Tax & Corporate News Bulletin

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VAISH ASSOCIATES ADVOCATES
Corporate, Tax and Business Advisory Law Firm

From the Editor's Desk...

Dear Reader,

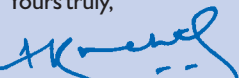
In August 2009, the Government issued Direct Taxes Code Bill 2009 (the "Code") which intends to replace the existing direct tax statutes w.e.f. April 1, 2011. The stated intention and purpose of the Code is to collate all the direct taxes such as income tax, dividend distribution tax and wealth tax under one common statute and to simplify the present structure of direct taxes to reduce complexities, compliance cost and encourage voluntary compliance.

The Code has evoked a great debate across the country. Many of the provisions have drawn flak from all the quarters. To name a few, introduction of asset based minimum alternate tax is seen a regressive step. Excessive ambit of General Anti Avoidance Regulations (GAAR), which seeks to override the double tax avoidance agreements that India has signed with many countries, is seen to be an attempt by the Government to circumvent the international tax treaties in the garb of domestic regulation. Doing away with the profit linked incentive schemes is yet another provision which lacks proper consideration. So much so, the provisions of the Code seek to jeopardize the schemes like Special Economic Zones (SEZs).

Interestingly, the Ministry of Commerce & Industry has issued a flurry of instructions concerning SEZs in an attempt to provide an impetus to the SEZs. Considering that the tax aspect is always an important driver, it would remain to be seen as to what tax treatment is eventually offered to such schemes. Nevertheless, the Code has already created nervousness amongst the existing as well as prospective investors in the SEZs.

In a welcome move, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 have been issued to replace SEBI (Disclosure and Investor Protection) Guidelines, 2000. The new regulations seeks to remove the redundant provisions of the DIP Guidelines; modify certain provisions on account of changes necessitated due to market design; and to bring more clarity to the provisions of the rescinded DIP Guidelines. Let's hope, the new regulations give some impetus to the IPO flavour of Corporate India.

Yours truly,


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VAISH ACCOLADES

We are happy to report that **Vaish Associates** and Singapore based law firm **Dacheng Central Chambers** have agreed to work on 'best friends basis'. The alliance will endeavour to offer clients of both the firms greater access to China - Singapore -India business opportunities.

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INCOME TAX

Direct Taxes Code at a glance

Background

Key provisions of Direct Tax Code Bill, 2009 (the **Code**) which is intended to replace the existing direct tax statutes w.e.f. April 1, 2011, relating to direct taxes, have been listed below. The stated intention and purpose of the Code is to collate all the direct taxes such as income tax, dividend distribution tax and wealth tax under one common statute and to simplify the present structure of direct tax to reduce complexities, compliance cost and encourage voluntary compliance.



Key provisions of the Code

- ✧ The Code is proposed to come into force in April 2011.
- ✧ Separate concepts of 'previous year' and 'assessment year' proposed to be replaced by a unified concept of 'financial year'.
- ✧ Liberal tax slabs proposed, aimed at reducing tax burden for individuals. For individuals, the peak rate of 30% would apply only in reference to income exceeding Rs.25 lakhs.
- ✧ Rate of tax for corporate domestic and foreign companies reduced to 25%. Branches of foreign companies sought to be taxed @ 15% in addition to the corporate rate of tax.
- ✧ Minimum Alternate Tax to be computed @ 0.25% of the value of assets in the case of banking companies and @ 2% of the value of assets in case of all other companies.
- ✧ Dividend Distribution Tax retained at 15% for dividends distributed by domestic companies. Single tier exemption for holding companies retained.
- ✧ Securities transaction tax proposed to be abolished.
- ✧ Neither Double Taxation Avoidance Treaty (DTAA) nor the Code to have preferential status and in case of a conflict between the two, the one that is later in point of time shall prevail.
- ✧ General Anti Avoidance Regulations (GAAR) to provide as follows:
 - i. Provisions can be invoked by Commissioner of Income-tax if he finds that the taxpayer has entered into an arrangement with the main purpose of obtaining a tax benefit.
 - ii. An arrangement could mean any transaction, conduit, event, trust, etc, and arrangement could include round trip financing, conducting business through intermediaries.
 - iii. As a consequence of being declared impermissible avoidance arrangement, CIT may modify or disregard or re-characterize the arrangement.
 - iv. Code provides that GAAR will override provisions of a Tax Treaty.
- ✧ To claim benefit of a tax treaty, every person would need to furnish a tax residency certificate issued by the tax authorities in their respective jurisdiction.
- ✧ Concept of Advance Pricing Agreement ('APA') introduced. Assessee may enter into an APA with the Central Board Direct Taxes, in respect of the arm's length price in relation to an international transaction.
- ✧ Individuals, Hindu Undivided family ('HUF') and private discretionary trusts are all brought within the ambit of wealth tax.
- ✧ Though the discussion paper states that Tax payers currently enjoying export-based incentives under the present Act will be 'grandfathered', no mention of the same has been made in the Code.
- ✧ All financial intermediaries such as mutual fund, venture capital fund and venture capital companies, etc granted 'pass thru' status. Hence the income will be taxable in the hands of the investors.

Transport facility from residence to office and vice versa not taxable as perquisite

Transwork Information Services Ltd vs. ITO (29 SOT 543)

- ✧ Transwork Information Services (“Transwork”), a company carrying on the business of information technology enabled services, call centers etc, paid conveyance allowance of Rs. 800/- per month to its employees. In addition to the said allowance, Transwork also provided bus services facility to pick up and drop the employees till the nearest railway station in the day time, and home pick up and drop facility during the night time.
- ✧ The Mumbai bench of the Tribunal held that in view of the specific provisions viz. Explanation to section 17(2)(ii) of the Income-tax Act (“the I.T Act”) which does not consider provision of vehicle to employees for transporting them from residence to office and back as perquisite, the transport facility provided by Transwork to the employees cannot be considered as a taxable perquisite in the hands of the employees. The Tribunal also held that it is not possible to compute the value of transport facility attributable to each of the employee since it is in the nature of composite service collectively provided to the employees throughout the year. The Tribunal concluded that no tax was therefore, required to be deducted at source in respect of the benefit arising to the employees on account of the transport facility provided by Transwork.



HC rules depreciation not allowable on Bombay Stock Exchange membership card

CIT v Techno shares & Stocks Limited ITA (L) No. 971 of 2006

Techno shares & Stocks Limited (“Techno shares”), a stock broking company acquired Bombay Stock Exchange Membership Card (‘BSE card’). Depreciation was claimed on the same under section 32 of the IT Act, which w.e.f. April 1, 1998 allowed for depreciation even in respect of certain intangible assets viz know-how, patents,



copyrights, trade marks, licenses, franchises or any other ‘business or commercial rights of similar nature’.

The issue before the High Court was whether the BSE card acquired by Techno shares on or after April 1, 1998, was covered under the expression ‘licenses’ or ‘business or commercial rights’ as referred to in section 32(1)(ii) of the IT Act, on which depreciation was allowable.


The tax authorities contended that the expression ‘business or commercial right of similar nature’ under section 32(1)(ii) of the IT Act has to be construed by applying the principles of ejusdem generis, and that, the term ‘licenses’ as well as the expression ‘business or commercial rights of similar nature’ referred to in that section are relatable to the intellectual property rights in respect of the intangible assets. Further, it was contended by the Tax authorities that the BSE Card does not fall in the category of licenses or business/ commercial rights in the nature of intellectual property rights.

In response, Techno shares contended that as the term ‘license’ is not defined in the Act, it has to be understood in the common parlance. Alternatively, it was contended that, the term ‘licenses’ and the term ‘business or commercial rights of similar nature’ which are akin to licenses need be interpreted in wider sense and in the present context the rule of interpretation of noscitur a sociis or ejusdem generis would not apply to decide the scope of the above expressions.

The Mumbai High Court observed that, the scope of section 32 of depreciation is restricted to only the specified intangible assets as enumerated in the section. All the intangible assets specifically enumerated in section 32 of the Act (except the expression licenses) belong to the class of intellectual properties. The term licenses is preceded by the terms ‘know-how’, ‘patents’, ‘copyrights’, ‘trade marks and succeeded by the expression ‘franchises’, which all are all relatable to intellectual property rights. In view of this and applying the rule of noscitur a sociis, the expression ‘licenses’ should be construed as licenses relating to intellectual properties. Similarly, the expression ‘business or commercial rights of similar nature’ should be construed as relatable to intellectual property rights only. The BSE card was held by the High Court as not constituting a license or a ‘business or commercial right’ in relation to an intellectual property and hence the depreciation on the same was not admissible under Section 32(1)(ii) of the IT Act.

Legal services are technical services and payments are liable to tax under the provisions of the I.T. Act, 1961

DDIT v Tata Irons Steels (2009-TIOL-565-ITAT-MUM)

- ✧ Tata Irons Steels, an Indian Company, availed legal services from a firm of solicitors based in Hong Kong in connection with the Euro Issue of Convertible Bonds, brought out by Tata Irons Steels.
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- ✧ The Tribunal held that the above legal services rendered, constituted 'Fees for Technical Services' which has been defined in section 9(1)(vii) of the IT Act to mean payment towards technical, maintenance or consultancy services.
 - ✧ The Tribunal observed that once an expression is covered by a specific section, the general use of the expression elsewhere in the Act cannot prevail over the specific meaning given by the section. It was observed that merely because separate reference to 'Fees for Professional Services' and 'Fees for Technical Services' has been made in section 194J of the IT Act, it would not mean that legal services, which are professional services would cease to be 'Fees for Technical Services' as defined in the Explanation to section 9(1)(vii) of the IT Act. The legal services were held to be "Fees for Technical Services" in terms of Explanation 2 to section 9(1)(vii) of the IT Act and the assessee was held to be an assessee in default for not withholding tax from the same under section 195 of the IT Act.

SERVICE TAX & VAT

Provisions of the Finance Act, 2009 notified w.e.f. September 1, 2009

- ✧ The provisions of Finance Act, 2009 have come into force w.e.f. September 1, 2009.

[Source: Notification No. 26/2009-Service Tax dated August 19, 2009]

Sales Tax/ VAT not applicable on the hiring of chauffeur driven cars on transfer of right to use basis under the provisions of the DVAT Act, 2004

Commissioner of VAT v. International Travel House Ltd.



- ✧ The Hon'ble Delhi High Court, in a landmark judgment in the case of *Commission of VAT v. International Travel House Ltd.*, adjudicated upon the issue of the applicability of

Sales Tax/ VAT on the hiring of chauffeur driven cars on transfer of right to use basis under the provisions of the Delhi VAT Act, 2004 ("DVAT Act").

- ✧ In the said case, the primary issue for consideration was whether giving on the hire chauffeur driven 'Maruti Omni Cabs' by International Travel House Ltd. ("Respondent") to its client(s) would be subject to VAT under the provisions of the DVAT Act.
- ✧ The Department in the said matter had filed a sales tax appeal before the Delhi High Court against the order dated October 16, 2008 passed by the Delhi VAT Tribunal, wherein the Tribunal held that the respondent is providing services only and there is no transfer of right to use goods for the levy of tax under the DVAT Act.

The following issues primarily arose for determination before the Hon'ble Delhi High Court:

- a. Whether the transaction in question is 'sale' within the meaning of the expression in Article 366(29-A)(d) of the constitution?
- b. Whether the contracts in question are contract for services and hence not assessable to tax under the DVAT Act? In other words, can the VAT Authorities impose tax on a transaction in question because it contains element of goods and services both?

The Hon'ble High Court primarily relying upon the observations made by the Apex Court in the case of *Bharat Sanchar Nigam Ltd v. Union of India (2006) 3 SCC 1*, dismissed the appeal filed by the Department and passed an order in favour of the Respondent.

The Hon'ble Delhi High Court held that in the present facts the transaction in question cannot be considered as sale of goods as

envisaged under Article 366(29-A)(d) of the Constitution and nor can the composite contracts be split up by taking from it the value of goods for the purposes of taxing the same under the DVAT Act.

In the above matter, the Chamber was represented by Shammi Kapoor, Kavita Jha, Payal Khanna and Megha Suri, Advocate/s.

Advance Ruling Scheme extended to 'Public Sector Company'

✧ The definition of “applicant” under the Advanced Rulings scheme has been extended to 'public sector company' by the Central Government by virtue of powers conferred under section 96A (b) (iii) of the Finance Act.



[Source: Notification No. 27/2009-ST dated August 20, 2009]

Taxable services provided in relation to management, maintenance or repair of roads exempted from service tax

✧ The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads under section 65(105)(zzg) of the Finance Act, 1994 (the “Finance Act”), has been exempted from the whole of the service tax leviable thereon under section 66 of the Finance Act.

[Source: Notification No. 24/2009-Service Tax dated July 27, 2009]

Taxable services in relation to transport of specified goods by rail exempted from service tax

✧ The taxable service provided to any person in relation to transport of some specified goods by rail (list of goods given under the table annexed to Notification no. 28 of 2009 ST) as under section 65 (105) (zzzp) of the Finance Act from the whole of the service tax leviable thereon under section 66 of the Finance Act. This notification shall come into force w.e.f. September 1, 2009.



[Source: Notification No. 28/2009 - Service Tax dated August 31, 2009]

✧ Further, the taxable service provided to any person in relation to the transport of (specified) goods through national waterway, inland water and coastal shipping given under section 65 (105) (zzzzl) of the Finance Act have been exempted from the whole of service tax leviable thereon under section 66 of the Finance Act. The list of goods has been given under the table annexed to the notification. The notification comes into force w.e.f. September 1, 2009.

[Source: Notification No. 30/2009 - Service Tax dated August 31, 2009]

Taxable services in relation to sale or purchase of securities by sub-broker to a stock-broker exempt



✧ The taxable service referred to in section 65 (105)(zzb) of the Finance Act provided by a sub-broker, to a stock-broker as defined in clause (101) of Section 65 of the Finance Act,

in relation to sale or purchase of securities listed on a registered stock exchange, have been exempted from the whole of the service tax leviable under section 66 of the said Finance Act.

[Source: Notification No. 31/2009-Service Tax dated September 1, 2009]

Business auxiliary services in relation to manufacture of specified goods exempt from service tax



✧ The taxable service referred to section 65 (105) (zzb) of the Finance Act, provided by any person, to a client as defined under section 65 (19) of the Finance Act, in relation to the manufacture of

pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955, have been exempted from the whole of the service tax leviable under section 66 of the Finance Act.

[Source: Notification No. 32/2009-Service Tax dated September 1, 2009]

Taxable service provided by Government railway in relation to transport of goods by rail exempt from service tax

✧ The taxable service provided to any person in relation to transport of goods by rail as per section 65 (105)(zzzp) of the Finance Act, have been exempted from the whole of the service tax leviable under section 66 of the Finance Act. However, the same is only applicable to any service provided or to be provided, by government railway, in relation to transport of goods in containers by rail.

[Source: Notification No. 33/ 2009-Service Tax dated September 1, 2009]

Exemption from taxable services under Clubs and Association extended to some more associations by amendment to Notification no. 16/2009-Service Tax

✧ The taxable services under Clubs and Associations in section 65 (105) (zzze) of the Finance Act, provided to certain association defined under Notification no. 16 of 2009 had been exempted from the whole of the service tax payable w.e.f. July 7, 2009 till March 31, 2010. Notification no. 16 of 2009 has now been amended to add five more associations which shall be exempt under the same.



[Source: Notification No. 35/ 2009-Service Tax dated September 3, 2009]

FOREIGN DIRECT INVESTMENT

Clarification on FDI into SSI Undertaking/ MSE and in Industrial Undertaking manufacturing items reserved for SSI/ MSE

Foreign Direct Investment into Small Scale Industrial/ Micro & Small Enterprises

I. A Small Scale industrial (SSI) undertaking was defined in terms of: (i) investment in fixed assets in plant and machinery and (ii) equity participation (both domestic and



foreign) in the SSI, by other industrial undertakings prior to 2006.

2. Vide Press Note 18 (1997), it was further notified that, for cases of foreign collaborations, since the maximum equity participation allowed for in small scale units was 24%, proposals for induction of foreign equity more than 24% would be subject to the condition that: (i) the company would get itself de-registered as a small scale unit and (ii) obtain industrial licence or file Industrial Entrepreneur Memorandum with SIA, as per prescribed policy and procedure.
3. With the promulgation of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, the ceiling for equity participation (both domestic and foreign) in the Micro and Small Enterprises (MSE), by other enterprises, was removed and MSE were defined solely on the basis of investment in plant and machinery (for MSE engaged in manufacturing) and equipment (for MSE engaged in providing or rendering of services). Accordingly, this change was notified by Notification No. S.O. 563(E) dated February 27, 2009 of Department of Industrial Policy & Promotion, Ministry of Commerce & Industry.

Thus, the present policy on FDI in MSE permits FDI subject only to the sectoral equity caps, entry routes and other relevant sectoral regulations.

FDI in Industrial Undertaking manufacturing items reserved for SSI/ MSE



1. Vide Press Note 14 (1997), it was notified that Industrial Undertakings manufacturing items reserved for small scale sector were not eligible for automatic approval for induction of foreign investment.
2. Accordingly, the FDI policy notified vide Press Note 2 (2000) prescribed prior approval of Government where foreign investment was more than 24% in the equity capital of units manufacturing items reserved for SSI. This was reiterated in the Annex to Press Note 4 (2006) and at Para III (ii) of Annex to Press Note 7 (2008).

3. Accordingly, any industrial undertaking, with or without FDI, which is not a MSE, manufacturing items reserved for manufacture in the MSE sector (presently 21 items) as per the Industrial Policy, would require an Industrial License under the Industries (Development & Regulation) Act, 1951, for such manufacture. The issue of the Industrial Licence will be subject to a few general conditions and the specific condition that the undertaking shall undertake to 'export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production'. Such an industrial undertaking would also require prior approval of the Government (FIPB) where foreign investment is more than 24% in the equity capital.

[Source: Press Note No.6 (2009) dated 04/09/2009-DIPP]

COMPETITION LAW

MRTP Act repealed and replaced by Competition Act

- ✧ The Ministry of Corporate Affairs (MCA), Government of India has brought into force section 66 of the Competition Act, 2002. With effect of the said notification, the Competition Act will now replace the Monopolies and Restrictive Trade Practices Act, 1969 ('MRTP Act'). Prior to the notification of this section, there was some uncertainty over which law would regulate anti-competitive practices given that certain provisions of the MRTP Act as also the Competition Act, which overlapped to some degree, were both in force.



The MRTP Commission will be phased out in the next two years commencing from September 1, 2009. The following transitional provisions would apply as provided in section 66 of the Competition Act, 2002:

- ★ The MRTP Commission will continue to exercise jurisdiction and power under the repealed MRTP Act

in respect of any case or proceeding filed before September 1, 2009, for a period of two years. It will not, however entertain any new case arising under the MRTP Act on or after September 1, 2009.

- ★ On the expiry of the two year time frame, the MRTP Commission shall stand dissolved and all cases pertaining to monopolistic or restrictive trade practices, including cases having an element of unfair trade practice, pending before it shall be transferred to the Competition Appellate Tribunal and all cases relating solely to unfair trade practices shall stand transferred to the National Commission constituted under the Consumer Protection Act, 1986.
- ★ Cases relating to giving false or misleading facts disparaging the goods, services or trade of another person under the MRTP Act shall be transferred to the Competition Appellate Tribunal which will be dealt in accordance with the provisions of repealed MRTP Act.

[Source: Notification no. S.O. 2204(E) - MCA dated August 28, 2009]

SEBI & CORPORATE LAWS

Notification of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009



- ✧ The SEBI has notified SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (**ICDR Regulations**), which came into force w.e.f. August 26, 2009. These ICDR Regulations replace the earlier SEBI (Disclosure and Investor Protection) Guidelines, 2000 (**DIP Guidelines**).
- ✧ The ICDR Regulations seeks to remove the redundant provisions of the DIP Guidelines; to modify certain provisions on account of changes necessitated due to market design; and to bring more clarity to the provisions of the rescinded DIP Guidelines.

✧ Pursuance to the ICDR Regulations, certain provisions regarding the conditions to be satisfied by the unlisted issuer at the time of making an initial public offer have been now deleted from the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 and have been incorporated in the ICDR Regulations.



✧ Relevant amendment to this effect has also been made in the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999. Further, the provisions of clause 3.5.3 of the DIP Guidelines have been incorporated in the equity listing agreement, as these provisions pertain to compliance of listing conditions by a listed issuer.

✧ In terms of Regulation 111 of the ICDR Regulations, any offer document, whether draft or otherwise, filed under the DIP Guidelines and pending before SEBI shall be deemed to have been filed or made under the corresponding provisions of the ICDR Regulations.

Procedure for updations in the Offer Document filed with SEBI

✧ In case of public or rights issues, the disclosures made in the draft Offer Document filed with the SEBI may undergo changes due to developments before the offer document is filed with the Registrar of Companies or the stock exchanges, as the case may be. Such changes are generally informed to SEBI by the merchant bankers associated with the issue. It has been observed in some cases that the material changes informed by merchant bankers resulted in major deviations from the draft offer document that was available in public domain and called for fresh scrutiny/processing of the draft offer document by SEBI. Accordingly, it has been decided by SEBI, that the changes in offer documents into two categories:

1) Changes in offer documents which may call for filing of updated offer document with the SEBI along with fees.

2) Changes in offer documents which may call filing of updated offer document with the SEBI without fees.

[Source: Circular no. SEBI/CFD/MB/IS/4/2009/31/07 dated July 31, 2009]

Aid for legal proceedings



✧ The SEBI has on August 11, 2009 issued SEBI (Aid for Legal Proceedings) Guidelines, 2009 under which, any investor's association may make an application to SEBI seeking aid for undertaking legal proceedings. The aid for legal proceedings shall be granted at the discretion of the SEBI if it is *prima facie* satisfied that the aid is in the best interest of the investors. The aid for a particular legal proceeding shall not exceed Rs.20-Lac if it is before the Supreme Court of India and Rs. 10-Lac before any other forum.

For further details, please visit www.sebi.gov.in.

Amendments to the scheme for filing of statutory documents and other transactions by companies in electronic mode



MCA has vide Notification no. S.O. 2276(E), dated September 7, 2009 issued the "Scheme for Filing of Statutory Documents and other Transactions by Companies in Electronic Mode (Amendment) Scheme, 2009" (the "Amended Scheme") which has come into force w.e.f. September 13, 2009. The

Amended Scheme provides for collection of stamp duty on documents through MCA portal and dispensation of physical submission thereof. The salient features of the Amended Scheme are as under:

✧ The Central Government, for the purpose of making all transactions faster, improving service delivery and making Office of the Registrar paperless, has decided to dispense with the physical submission of documents.

✧ The Central Government shall initially collect stamp duty payable on Form No.1, Memorandum of Association,

Article of Association, Form No. 5 and Form No. 44 at the time of their e-filing, through MCA portal www.mca.gov.in.

- ✧ The Central government shall collect the stamp duty on behalf of the State Governments and Union territories for specific purpose of e-filing of documents under the provision of the Companies Act, 1956 and to remit the same directly to the accounts of the State Governments and Union territories in accordance with the approved payment and accounting procedure.
- ✧ There shall be a transition period of three and a half months to enable the companies to use their already purchased stamp papers. January 1, 2010 shall be the cut off date for a company to compulsorily make payment electronically for stamp duty in respect of the States which have authorized the Central Government to collect stamp duty on their behalf. In respect of the States from whom the authorization is yet to be received, the company shall continue to pay stamp duty outside the MCA portal.
- ✧ The company shall not make physical submission of documents on which stamp duty is paid electronically through MCA portal. However, documents on which stamp duty is not paid through MCA portal, the company shall, in addition to their electronic filing, simultaneously submit physical copies of such stamped documents at the office of the Registrar also.

[Source: Notification no. S.O. 2276(E), dated September 7, 2009]

SPECIAL ECONOMIC ZONES (SEZs)

Instruction related to SEZs issued by Department of Commerce

The following instructions related to Special Economic Zones (SEZs) have been issued by Department of Commerce (DoC):

- a) Guidelines for relaxation of contiguity criteria in respect of SEZs. [Instruction no. 27]



- b) Guidelines regarding land acquisition for SEZs. [Instruction no.29]
- c) Development guidelines to be followed in respect of non-processing area of SEZs. [Instruction no. 30]
- d) Clarification on requirement of lease agreement when developer/ co-developer and unit are the same - there is no need for a separate lease agreement between the developer/co-developer and unit. An allotment letter from the developer or co-developer to the unit would suffice. [Instruction no. 31]
- e) Clarification on clearance of used goods into Domestic Tariff Area (DTA) - capital goods which have been procured by the developer/ co-developer for undertaking authorised operations in SEZ can be supplied back into DTA in accordance with the procedure provided in Rule 49(3) of the SEZ Rules, 2006 i.e. by paying duty that is equivalent to the export entitlements received by it and by establishing the identity of such capital goods to the satisfaction of the Specified Officer. [Instruction no. 32]
- f) Time lines for disposal of various categories of applications. [Instruction no. 33]
- g) Consolidated list of default authorised operations which can be undertaken by the developer/approved co-developer by default from the date of notification. [Instruction no. 35]
- h) Instructions regarding proposals to be considered by Board of Approval (BoA) – copy of proposal sent to BoA also to be sent to the concerned Development Commissioner for analysis and comments on the same to be sent to the Ministry for the next meeting of BoA. [Instruction no. 36]
- i) Procedure for consideration of operational issues regarding SEZs –to be brought before the Unit Approval Committees, and if still unresolved, to be referred to the Department of Commerce for a decision by BoA. [Instruction no. 39]

[Source: www.sezindia.nic.in]

IMPORTANT DATES WITH REGULATOR (S) COMPLIANCE CHECKLIST September - October, 2009

Sr. No	PARTICULARS	Sections/ Rules Clauses, etc	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
A. INCOME TAX					
1	Deposit TDS From Salaries paid for September, 2009	Section 192	Income-tax Act, 1961	October 7, 2009	Income-tax Authorities
2	Deposit TDS from Contractors' bill, Payment of Commission or Brokerage, Professional/ Technical Services bills/ Royalty made in September, 2009	Section 194C, 194H, 194J	Income-tax Act, 1961	October 7, 2009	Income-tax Authorities
3	Quarterly Statement of TDS in Form 27Q (Payment to non-residents)	Rule 37A	Income-tax Rules, 1962	October 14, 2009	Income-tax Authorities
4	Quarterly Statement of TDS in Form 24Q (Salaries)	Rule 31A	Income-tax Rules, 1962	October 15, 2009	Income-tax Authorities
5	Quarterly Statement of TDS in Form 26Q (Other than Salaries)	Rule 31A	Income-tax Rules, 1962	October 15, 2009	Income-tax Authorities
B. CENTRAL EXCISE & SERVICE TAX					
6	Pay Service Tax in Form TR-6, collected during September, 2009 by persons other than individuals, proprietors and partnership firms	Rule 6	Service Tax Rules, 1994	October 5, 2009	Service Tax Authorities
7	Pay Central Excise duty on the goods removed from the factory or the warehouse during September, 2009	Rule 8(1)	Central Excise Rules, 2002	October 5, 2009	Central Excise Authorities
8	Submit monthly CENVAT Return for September, 2009	Rule 9(7)	CENVAT Credit Rules, 2004	October 10, 2009	Central Excise Authorities
9	Submission of half yearly Service Tax return in Form ST-3 or ST-3A along with copies of Form TR-6 (in triplicate), for the half year ended 30th September, 2009	Rule 7	Service Tax Rules, 1994	October 25, 2009	Service Tax Authorities
C. SEBI & CORPORATE LAWS					
10	Submission of Compliance Report for the quarter ended September 30, 2009	Clause 49	Listing Agreement	October 15, 2009	Stock Exchange
11	Submission of statement of shareholding pattern as at the end of the quarter ended September 30, 2009	Clause 35	Listing Agreement	October 21, 2009	Stock Exchange
12	Submission of audited/ un-audited quarterly financial results for the quarter ended September 30, 2009	Clause 41	Listing Agreement	October 31, 2009	Stock Exchange
13	Submission of Limited Review Report (in case of un-audited financial results for the quarter ended September 30, 2009	Clause 41	Listing Agreement	November 30, 2009	Stock Exchange

VAISH ACCOLADES

Conferences/ Seminars addressed by Partners/ Associates (Alphabetically)

- ✧ **Ajay Vohra** has been appointed Chairman of the Corporate Tax Committee of ASSOCHAM to look into the anomalies in the *Direct Tax Code Bill, 2009* in respect of the provisions dealing with corporate taxation.
- ✧ **Ajay Vohra** moderated a session on “*Philosophy behind the Code, Business Income, Capital Gains, and Non-Profit Organizations*” at the one day seminar on the Direct Tax Code Bill, 2009 organized by Income Tax Appellate Tribunal (ITAT) Bar Association on September 12, 2009 at New Delhi.



Ajay Vohra, Managing Partner Vaish Associates, at the IFA-India Southern Regional Chapter's Annual Conference on International Taxation, Chennai

- ✧ **Ajay Vohra** chaired the “*Brain Trust Session*” at the IFA-India Southern Regional Chapter's Annual Conference on International Taxation held on August 22, 2009 at Chennai.
- ✧ **Hitender Mehta** made a presentation at Rajasthan State Conference of Institute of Company Secretaries of India (ICSI) on the topic “*SEZ and LLP: Professional Avenues*” on September 5, 2009 at Jaipur.
- ✧ **Hitender Mehta** represented the Firm in the ASSOCHAM's **High Powered SEZ Mission to Japan** from July 27 to 31, 2009.



- ✧ **Hitender Mehta** was invited to address ASSOCHAM's International Convention on “*Special Economic Zones: High Return Zones*” on September 25, 2009 at New Delhi. His topic was “*Special Economic Zones: Operational Issues*”.

- ✧ **Rashmi Lodha** made a presentation on “*Capital Gains*” in the “*Workshop on Direct Taxes Code*” organized by PHD Chamber of Commerce & Industry on September 5, 2009 at New Delhi.
- ✧ **Rohit Jain** made a presentation on Direct Taxes Code Bill, 2009 at a Seminar organized by the Northern India Regional Council of the ICSI on August 22, 2009 at New Delhi.
- ✧ **Sandhya Iyer** made a presentation on “*Regulatory Challenges Evolution & Future of Indian ABS Market*” at the “*India Securitization Summit 2009*” organized by the National Institute of Securities Market (NISM) on July 8, 2009 at Mumbai.
- ✧ **Sangeetha Mugunthan** authored an article titled “*Tightening the Gaps in Delisting: An analysis of the Delisting Regulations, 2009*”, which featured in the Corporate Laws section of Taxman's 'Corporate Professionals Today' edition of August 1-15, 2009.

CSR Initiatives



Children at the Tarang Balwadi run by Vaish Associates Public Welfare Trust celebrating Independence day and Janmashtami

Welcome aboard...

- ✧ The Tax team of Vaish Associates has been strengthened by addition of several new associates with long standing experience, namely - Rashmi Lodha (earlier with PriceWaterhouseCoopers), Vishwanath Shukla & Shashank Shekhar (earlier with Lakshmikumaran & Sridharan), Puneeta Kundra (earlier with Amarchand Mangaldas), Ina Bansal (earlier with Ernst & Young) and Pallav Raghuvanshi.

M. M. Sharma joins as "Head -Competition Law & Policy"



M. M. Sharma has joined Vaish Associates as "Head -Competition Law & Policy". He has extensive experience of over 25 years in the field of law, and was associated with the Competition Commission of India (CCI) where he was actively involved in drafting a substantial part of the regulations under the Competition Act.



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.

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