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From the Editor...

Dear Reader,

At the outset, we wish you a splendid New Year 2012.

2011 looked to be full of action for the legislators and the policy makers. Like many other jurisdictions, Indian policy making also seems to be in a turbulent phase.

The policy makers did a good job in bringing various new bills/ papers, viz., Land Acquisition and Rehabilitation & Resettlement Bill, Real Estate Bill, Prevention of Money Laundering Bill, Companies Bill, Direct Taxes Code (DTC), Goods and Services Tax (GST), etc. On the other hand, amendments were made/ proposed in some of the prevailing legislations. Besides, various ambitious policies were unveiled by the Government, viz., National Manufacturing Policy, Industrial Policy, Draft National Competition Policy, Draft Telecom Policy, etc.

Amidst tremendous political opposition, the FDI policy in multi-brand retail trading could not become a reality. Many important bills, including the much talked about Lokpal Bill, could not be passed. Also much awaited Companies Bill could not see the light of the day. Policy dilemmas and stalemate continued. India had to learn to live with such a policy paralysis.

The vital statistics of Indian economy indicate a possible slowing down of India's growth by a percentage point approx. Such a scenario may pose serious challenges before the economy. Unless timely steps are taken to immediately address the situation, the India's growth story would start fading away and the investment would divert to the competing neighbouring countries.

Let's hope, the political wisdom would rise to the occasion and act in the larger national interest.

Yours truly,

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INCOME TAX

Back office services are not 'technical services'

The Authority for Advance Rulings (AAR) has, in the case of *Shell Technology India Private Limited (AAR No. 850 of 2009)* held that the payment to a non-resident for Business Support Services does not constitute 'Fees for Technical Services' (FTS), under India-Netherlands Double Tax Avoidance Treaty (DTAA) and was, therefore, not liable to tax in India.

The applicant, an Indian company, engaged in providing technical services to its overseas group companies, entered into a business support service agreement with another group company namely, Shell Shared Services (Asia) BV (SSSABV), a company incorporated in Netherlands, through the latter's branch office located in Philippines. Under the agreement, the Philippines branch office of SSABV rendered business support services including invoice processing, monitoring operational execution, goods receipt/ invoice receipts and other services relating to accounts payables/ receivables, etc., to the applicant in consideration of monthly operation fee. The question before the AAR was whether such fee paid by applicant to SSSABV constituted FTS under Article 12(5) DTAA and was chargeable to income tax in India. The AAR held as follows:

- The entity in Philippines was only a branch of SSSABV Netherlands and the taxable status of the company has to be decided on the basis of the tax residency of the parent company, i.e., Netherlands. Therefore, India-Netherlands Treaty needed to be applied.
- Keeping in view the distribution of responsibilities amongst the two companies, it is clear that SSSABV provides services to the applicant without involvement of the applicant. Therefore, it cannot be said that anything was made available to the applicant. Therefore, no technical service was being provided to the applicant within the meaning of Article 12 of the DTAA.
- Further, the nature of services was back-office and not support-services. Therefore, consideration paid for the financial services received by the applicant was not in the nature of FTS within the meaning of Article 12 of the DTAA and the payment received by SSSABV was not taxable in India.

Comments: In this case, the AAR has held that services in the nature of business support services in the field of accountancy, etc., are not 'technical' services under Article 12 of the DTAA primarily on the ground that the services were rendered without any involvement of the recipient. Interestingly, in the recent ruling in case of *Perfetti Van Melle: (AAR No 869 of 2010)*, the AAR had taken an opposite view and held that services in the nature of accounting, budgeting, etc were 'technical' in nature under Article 12 of the same DTAA. Though the ruling of AAR applies only to the taxpayer who has sought the ruling and only has, at best, persuasive value, the diametrically opposite view taken by AAR in somewhat similar circumstances is likely create some uncertainty on this issue.

Delhi High Court ruling on taxation of turnkey contracts

The Delhi High Court, has, recently, in case of *Ericsson AB [ITA 397, 504, 507, 508, 511/2007]*, rendered a significant decision in relation to the tax implications arising under the turnkey EPC [Engineering, Procurement and Commissioning] contracts.

In the aforesaid case, the taxpayer, a tax resident of Sweden, was engaged in setting up of telecom networks. It entered into contracts with Indian cellular operators for installation of telecom networks in India, on a turnkey basis. The contracts involved supply of hardware and software from outside India, and installation and commissioning services, which were to be performed in India. The taxpayer entered into a contract for supply of software and hardware from outside India, while its associated company outside India entered into a contract for provision of installation and commissioning services. The latter contract was later on assigned to an Indian subsidiary of the Ericsson group. The taxpayer also entered into an overall agreement with the cellular operators under which the taxpayer provided guarantee for overall performance of the network, which included the installation work, carried out in India by the Indian subsidiary.

Before the contract was signed in India, a number of employees of the taxpayer and other associated enterprises visited India for the purpose of network survey and to negotiate the terms of the contract. The supply of equipment was on CIF basis and was subject to acceptance tests by the purchaser. The main issue before the Court was regarding taxability of income from the offshore supply contracts. The Court held as follows:

- The fact that the supply contract was signed in India, or that the equipment was subject to acceptance tests by the cellular operators was not relevant. The terms of the supply contract made it clear that the acceptance test was not a material event in passing of title and risk in the equipment supplied. This was amplified by the fact that even if the equipment did not pass the acceptance test, the only consequence was that the taxpayer would be asked to cure the defect by replacing or repairing defective part. The position might have been different if the buyer had the right to return the equipment in the event of failure of the acceptance tests carried out in India.
- In a supply contract, title to goods passes at the time when the parties intend the same to pass. It was clear that as per the terms, the title to equipment passed to the cellular operator outside India.
- The Revenue's contention that the supply agreement, installation agreement and overall agreement should be read together and they constituted business connection cannot be accepted. The execution of an overall agreement by the taxpayer was prompted purely by commercial considerations as the Indian cellular operator would be desirous of having a single entity that he could deal with. In fact, even the CBDT seems to have noted the same in its Instruction number 1829 dated 21 September 1989, which was valid during the year under question.
- The goods were manufactured outside India and even the sale had taken place outside India. Once that was established, even in cases where there is a composite contract, supply has to be segregated from installation and only then the question of apportionment would arise having regard to the language of Section 9(1)(i) of the Act, which makes income tax taxable in India to the extent it arises in India. Therefore, the income from supply of equipment was not taxable in India, in the absence of a 'business connection' in India within the meaning of Section 9(1)(i) of the Act.
- As far as installation contract is concerned, that was between installation contractee and the cellular operators and mere fact that the installation contractee was a subsidiary of the taxpayer, did not give rise to a business connection of the taxpayer in India.

As regards taxation of payment for embedded software as royalty, the Court held as follows:

- The software supply was an integral part of the GSM mobile telephone system and was to be used by the cellular operator for providing the cellular services to customers. There was no independent use of software. The Supreme Court, in case of *TCS: 271 ITR 401* held that software which is incorporated on a media would be goods and therefore, when the taxpayer supplies the software which is incorporated on a CD, it could be said to have supplied tangible property and the payment made by the cellular operator for acquiring such property could not be considered as royalty.
- In order to qualify as royalty, it is necessary to establish that there is transfer of all or any rights (including granting of any license) in respect of copyright of a literary, artistic or scientific work. In the instant case, it has not been established that the cellular operator has acquired such rights. Distinction had to be made between acquisition of a copyright right and a copyrighted article. It is not even the case of the Revenue that rights as contemplated under Section 14 of the Copyright Act, 1957 stood vested in the cellular operators. Therefore, the payment for such software could not be treated as royalty.

Comments: The Delhi High Court, while upholding the ruling of the Tribunal, has re-affirmed the principle of apportionment, laid down by the Supreme Court in *Ishikawajima:288 ITR 408* and has held that even in case of a composite contract, income attributable to activities carried out outside India would not be taxable in India. As regards taxation of software, the Court has appreciated the internationally recognized distinction between rights in a copyright and rights in a copyrighted article and has held that use of copyrighted article will not result in royalty. The aforesaid decision would keep clear the picture regarding the tax implications under EPC contracts in general, the effect of overall umbrella guarantee provided by the foreign supplier, and the nature of software license etc. in particular, considering that there has been considerable divergence of judicial opinion on the above issues.

Karnataka High Court holds payment for purchase of shrink-wrapped software as royalty

The Karnataka High Court in the case of *CIT v Samsung Electronics Co Ltd and others (ITA No 2808/2005 and others)*, has ruled that payment made for purchase of shrink-wrapped software is in the nature of royalty and liable to tax in India.

The taxpayer imported "shrink-wrapped" [non-customized/off the shelf] software from suppliers in foreign countries and made payment for the same without deducting tax at source under Section 195 of the Act. The issue before the Court was whether the impugned payment was taxable in India as "royalty" under Section 9(1)(vi) and relevant Article of the Double Taxation Avoidance Agreements with US, France and Sweden, and consequently, whether the taxpayer was required to withhold tax thereon under Section 195 of the Act.

The Court held as follows:

- As per the agreement, what is being transferred is the license to use the copyright' belonging to non-resident subject to the terms and conditions laid down in the agreement while the supplier of software continues to be the owner of such copyright. Therefore, there was a transfer of right in a copyright in the instant case.
- The ruling of the Supreme Court in case of *Tata Consultancy Services: 271 ITR 401,* did not advance the case of the taxpayer since in that case, (i) the issue before the Court was not whether payment for use of software was royalty; and (ii) the issue of transfer of right to use the goods as per expanded definition of 'sale' did not come up before that Court.
- As per the provisions of the Copyright Act, 1957, the right to copyright would also constitute exclusive right of the copyright holder and any violation of the said right would amount to infringement. However, if such copying is done by a lawful license holder, the same would not amount to infringement. Therefore, the argument that no part of copyright or no right in copyright was transferred could not be accepted.
- The observation of the Delhi High Court in case of *Dynamic Vertical Software India Pvt. Ltd. [ITA no 1692/2010],* that purchase and re-sale of software could not be termed as royalty, was not applicable since the same was in context of Section 40(a)(i) of the Act.
- There is no similarity between purchase of pre-recorded music CD and purchase of CD containing software since the software would be useful only when downloaded to the computer of the user and the download could be made only pursuant to a license, whereas prerecorded music CD can be used once they are purchased.

Comments: The issue of transfer of rights in a copyright vs. right in a copyrighted article has continued to engage judicial attention in India. Recently, in case of *Ericsson AB: [ITA 397, 504, 507, 508, 511/2007],* the Delhi High Court affirmed the order of the Special Bench of the Tribunal that payment for embedded software did not amount to royalty. The 2010 update of the Commentary on OECD Model Tax Convention on income and on capital recognizes that copying the software program onto the computer's hard drive or random access memory or making an archival copy is an essential step in utilizing the program and, therefore, rights in relation to these acts of copying, where they do no more than enable the effective operation of the program by the user, should be disregarded in analyzing the character of the transaction for tax purposes. However, the judicial view in India appears to be divided on the issue. It appears that this issue, too, may acquire finality only after the Supreme Court pronounces its ruling.

Principal-agent relationship necessary to constitute payment as commission under Section 194H

The Delhi Bench of Income Tax Appellate Tribunal, in case of *SRL Ranbaxy Ltd.* Vs. Addl. Commissioner of Income Tax (ITA No. 434(Del),* 2011, held that existence of Principal – Agent relationship is must, for applicability of the provisions of Section 194H of the Income Tax Act, 1961 ('the Act').

In this case, the taxpayer had entered into non-exclusive agreements with domestic and international collection centers comprising of hospitals, nursing homes, etc. In accordance with these agreements, the Collection Centres collected samples from patients, customers and forwarded the samples to specialized testing laboratories like, the taxpayer. The Centres issued their own invoices to the customers and the specialized laboratories like the taxpayer issued invoice to such Centres in respect of tests performed by them. The Centres made payment to the taxpayer after deducting tax under Section 194J of the Act. In certain cases, the taxpayer allowed discount to the Centres. The Revenue treated such discount as 'commission' and disallowed the same under Section 40(a)(ia) of the Act on the ground that tax was not withheld on such 'commission'. On second appeal, the Tribunal held, as follows:

i. The element of agency is necessarily to be there in cases of all the services or the transactions contemplated by Section 194H of the Income-tax Act.

* Now known as Super Religare Laboratories Ltd.

ii. The collection centres were not the agents of the taxpayers in view of the following:

a. Collection Centres used to deduct tax at the source from the payment made to taxpayer under Section 194J; were it otherwise, the entire receipt would have been collected on behalf of the taxpayer by the Collection Centres Centre.

b. The taxpayer had no control over the price fixed by the collection centres.

c. It has not been shown that the rates charged by the Collection Centres from its customers were not decided by the Collection Centre;

d. The receipt of the Collection Centres, as such, is the income of the Collection Centres themselves and not that of the taxpayer.

iii. In any case, tax under Section 194H of the Act was deductible at the time of payment or credit whichever is earlier. In the taxpayer's case, it has neither paid any amount to the collection centres nor credited any amount to their account in the books of account. The taxpayer on the other hand received the amount from the collection centres after deduction of tax at source. Therefore, the taxpayer was not liable to deduct tax at source under Section 194H of the Act.

Comments: The Tribunal has reinforced the position that in order to consider a payment as commission under Section 194H of the Act, there should be a principal-agent relationship between the payer and payee. This would provide clarity to taxpayers faced with similar issues.

SERVICE TAX

Service Tax refund to exporters through the Indian Customs EDI Systems (ICES)

Government of India has introduced simplified scheme for electronic refund of service tax to exporters, on the lines of duty drawback. With the introduction of this new scheme, exporters now can exercise any of the two choices:

i) to opt for electronic refund through ICES system, which is based on the 'schedule of rates'; or

ii) to opt for refund on the basis of documents, by approaching the Central Excise/ Service Tax formations.

(Source: CBEC Circular No. 149/18/2011-ST, dated December 16, 2011)

CORPORATE LAWS/ SEBI

Online Public Search of Trade Marks on MCA website

In order to provide enhanced services to its stakeholders, Ministry of Corporate Affairs (MCA) has provided a facility for searching the trademark database before applying for name availability. The stakeholders can now use the link 'Public Search of Trade Marks' available on the MCA21 portal (*http://124.124.193.245/tmrpublicsearch/frmmain.aspx*) before applying for a company name to verify that the name is not subjected to any trademark or pending for trademark registration.

(Source: www.mca.gov.in)

Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011

MCA *vide* notification dated December 14, 2011, has amended the Unlisted Public Companies (Preferential Allotment) Rules, 2003 ("Rules"). The application of Rules has been extended to preferential allotment of instruments (including hybrid instruments) convertible into shares by making consequential amendments in the definition of 'preferential allotment' and other provisions of the Rules. The following new provisions have been made in respect of invitation and allotment of securities on preferential basis:

(a) fresh offer or invitation not to be made unless the allotment with respect to earlier made offer or invitation has been completed in terms of Section 60B(9) of the Companies Act, 1956;

(b) offer or invitation not in compliance with Section 81(1A) read with Section 67(3) of the said Act, to be treated as a public offer and the provisions of the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 to be complied with;

(c) all monies payable on subscription to be paid only through cheque/ demand draft/ other banking channels and not by cash;

(d) allotment of securities to be completed within 60 (sixty) days from the receipt of application money and in the event of failure to do so, the company to repay the application money within 15 (fifteen) days thereafter, failing which it will be required to repay application money with interest at the rate of 12% per annum;

(e) application money to be kept in a separate bank account and to be utilized only for the purpose of adjustment against allotment of securities or repayment of monies where the company is unable to allot securities;

(f) the company offering securities, not to release any public advertisements or utilize any media, marketing or distribution channels or agents, to inform the public at large about such an offer.

(Source: MCA Notification No. F. 2/21/2011-CL V dated December 14, 2011)

Clarification on Green Initiatives in Corporate Governance - Participation by shareholders in meetings through electronic mode and e-voting

MCA *vide* its Circular No. 35/2011 dated June 6, 211 had provided that holding of shareholders meetings through video conferencing would be optional for the financial year 2011-2012, and thereafter mandatory for all listed companies. MCA has now clarified that holding of shareholders meetings through video conferencing shall continue to be optional for listed companies for the subsequent years too.

Further, MCA has now provided that any agency who has obtained certificate from Standardisation Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India may provide electronic platform for e-voting in general meetings. Earlier, only NSDL and CDSL were authorized to provide such services in relation to e-voting in general meetings.

(Source: MCA Circular No. 17/95/2011-CL-V dated December 27, 2011)

Companies (Accounting Standards) Amendment Rules, 2011

In continuation of MCA Notification no. GSR 739(E) dated December 7, 2006, and its subsequent amendments thereto, MCA has amended the Accounting Standard on Effects of Changes in the Foreign Exchange Rates (AS-11), in respect of reporting of long term foreign currency monetary items. Through the aforesaid notification dated December 7, 2006, the companies were given an option to adjust exchange differences arising on reporting of long term foreign currency monetary items at rates different from those at which they were initially recorded during the period or reported in previous financial statements by:

a) addition to or deduction from the cost of the asset - where long term foreign currency monetary item relates to the acquisition of a capital asset; and

b) accumulation of the difference in a 'Foreign Currency Monetary Item Translation Difference Account' and amortisation of the same over the balance period of such long term asset or liability - in other cases.

The time limit for companies who had exercised the option to adjust such exchange differences has been extended from March 31, 2012 to March 31, 2020. Further, MCA has also provided companies with a similar option for accounting period commencing on or after April 01, 2011. Thus, the option would be available for new as well as existing foreign currency loans of companies, the exchange differences of which have not been amortised earlier.

(Source: MCA Notification F No. 17/133/2008-CI V dated December 29, 2011)

Decisions taken in SEBI Board Meeting

SEBI in its Board Meeting held on January 3, 2012, has decided on the following:

1) **Allowing additional methods to comply with minimum public shareholding requirements under Securities Contracts Regulation (Rules), 1957 ("SCRR")**

SEBI shall allow two additional methods to listed companies to comply with the minimum public shareholding requirements prescribed under SCRR subject to compliance with conditions stipulated in this regard. The listed companies would be allowed to increase their public shareholding through (a) Institutional Placement Programme by offering shares to Qualified Institutional Buyers either by way of fresh issue of shares or by offer for sale of shares held by promoters; and (b) Offer for sale of shares by Promoters/ promoter group companies through stock exchanges (**"Auction Sale"**).

2) Amendment to SEBI (Buyback of Securities) Regulations, 1998

The following changes shall be made in the tender offer method of the buy-back process:

(a) Company will announce a ratio of buyback as in the case of rights issue. Shareholders are free to tender shares over and above their entitlement. However, acceptance of shares will first be on the basis of entitlement of each shareholder and the balance shares, if any, will be accepted by the company in proportion to the excess shares tendered by the shareholders.

(b) Company will fix "record date" as against "specified date" for the purpose of determining entitlement for buyback.

(c) Public announcement will have to be published within 2 working days from the date of Board or Shareholders' resolution, as the case may be.

(d) Timelines involved in the buyback process will be revised to facilitate reduction of timeframe in the buyback process.

(Source: SEBI's Press Release No. 2/2012 dated January 03, 2012)

Formal notification(s)/ circular(s) on the above are expected to be notified by SEBI soon.

Qualified Foreign Investors (QFIs) allowed direct access to Indian equity market

The Central Government, vide press release dated January 1, 2012 had announced its decision to allow QFIs to directly invest in Indian equity market in order to widen the class of investors, attract more foreign funds, reduce market volatility and to deepen the Indian capital market. In order to facilitate the above and in consultation with the Government and RBI, it has been decided that QFIs who meet prescribed Know Your Customer (KYC) requirements may invest in equity shares listed on the recognized stock exchanges and in equity shares offered to public in India.

QFIs will hold equity shares in a demat account opened with a SEBI registered qualified Depository Participant. To become a qualified Depository Participant for the purpose, certain conditions stipulated by SEBI in this Circular will have to fulfilled by a SEBI registered Depository Participant. Further, SEBI has also specified certain requirements governing eligible transactions for QFIs, manner of opening and operating the demat account, investment restrictions/ limits of QFIs etc.

It has been clarified that the transactions of QFIs will be treated at par with Indian non-institutional investors with respect to margins, voting rights, public issues etc. The investment by QFIs will be further subject to regulations and guidelines notified by RBI from time to time under the Foreign Exchange Management Act, 1999.

[Source: CIR/ IMD/FII&C/3/2012 dated January 13, 2012]

Public issue of Debt Securities- Prohibition on payment of incentives

SEBI, in order to curb the practice of passing the brokerage/ commission to the final Investors for subscription to public issue of debt securities, has clarified that, no person connected with the issue of the debt securities shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities, provided that the same shall not apply to fees or commission for services rendered in relation to the issue. The Circular has defined "person connected with the issue" to include a person connected with the distribution of issue.

(Source: SEBI Circular No. CIR / IMD / DF / 22 / 2011 dated December 26, 2011)

Increase in FII debt limit in Government and Corporate Debt category

The Government *vide* Press Release dated November 18, 2011 has decided to:

a) Increase the limit of FII investment in Government Securities to US $ 15 billion. The incremental limit of US $ 5 billion can be invested in securities without any residual maturity criterion;

b) Increase the limit of FII investment in corporate bonds to US $ 20 billion. The incremental limit of US $ 5 billion can be invested in listed corporate bonds.

(Source: SEBI Circular No. CIR/IMD/FIIC/ 20 /2011 dated November 18, 2011)

Amendment to SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations)

Debenture Trustees are required to make an application to Securities and Exchange Board of India (SEBI), under DT Regulations, for grant/ renewal of certificate to act as Debenture Trustee. As per Regulation 6 of the DT Regulations, one of the conditions for consideration of application for grant/ renewal of certificate is the fulfillment of capital adequacy requirements, i.e., minimum net-worth requirements prescribed under Regulation 7A of the DT Regulations.

SEBI has notified SEBI (Debenture Trustees) (Second Amendment) Regulations, 2011 thereby increasing, the minimum net-worth requirements prescribed under Regulation 7A of the DT Regulations, from ₹ 1 crore to ₹ 2 crore. Existing Debenture Trustees registered with SEBI shall be required to raise their net-worth to ₹ 2 crore within a period of 2 (two) years from the date of the amendment.

(Source: SEBI Notification No. LAD-NRO/GN/2011-12/30/37715 dated December 14, 2011)

Disclosure of Track Record of the public issues managed by Merchant Bankers

To facilitate adequate disclosures so as to enable investors to take well informed investment decisions and to provide satisfaction to the investor about the veracity and adequacy of the level of due diligence conducted by Merchant Bankers, it has now been decided in consultation with the merchant bankers that they shall disclose the track record of the performance of the public issues managed by them. The track record will be disclosed for a period of three financial years from the date of listing for each public issue managed by the merchant banker. If there are more than one merchant bankers to the issue, all merchant bankers who have signed the due diligence report are mandated to disclose the track record. The track record shall be disclosed on the website of the merchant banker and a reference to this effect shall be made in the offer documents of public issues managed in the future.

This Circular is applicable for all public issues listed after the date of this Circular. However, in case of public issues managed in the last 3 preceding years, the track record has to be disclosed by the merchant bankers latest by March 31, 2012.

[Source: CIR/MIRSD/1/2012 dated January 10, 2012]

FEMA/ RBI

ECB for MFIs and NGOs - engaged in micro finance activities under the automatic route

Considering the specific needs of the micro finance sector, the existing ECB policy has been reviewed in consultation with the Government of India and it has been decided that hence forth Micro Finance Institutions (MFIs) may be permitted to raise External Commercial Borrowings (ECB) up to USD 10 million or equivalent during a financial year for permitted end-uses, under the automatic route.

Non-Government Organisations (NGOs) engaged in micro finance activities can avail of ECB up to USD 10 million or equivalent per financial year under the automatic route as against the present limit of USD 5 million or equivalent per financial year.

(Source: RBI Circular RBI/2011-12/304 A.P. (DIR Series) Circular No. 59 dated December 19, 2011)

Compounding of contraventions under FEMA

As a measure of customer service and in order to facilitate the operational convenience, it has been decided to delegate the powers to the regional offices of the Reserve Bank of India mentioned below to compound the contraventions of following provisions of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000:

(i) delay in reporting of inward remittance,

(ii) delay in filing of form FC-GPR after allotment of shares, and

(iii) delay in issue of shares beyond 180 days.

Accordingly, with respect to abovementioned contraventions, the powers have been delegated to the following regional offices of RBI:

A.P.(DIR Series) Circular No. 74 dated June 30, 2011	Earlier condition	Revised condition
Para 3 (I) (d)	All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.	Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
Para 3 (II) (d)	The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.	The applications complete in all respects, for capitalisation being made within the period of 180 days from the date of incorporation of the company.

The Compounding Authorities attached to these Regional Offices of the Foreign Exchange Department have been authorised to compound such cases at their level(s) within the financial powers as per the Foreign Exchange (Compounding Proceedings) Rules, 2000.

Accordingly, all applications for compounding whether received on the advice of the Regional Office concerned or suo motu, relating to the contraventions mentioned above and up to the amount of contravention stated therein, may be submitted by the companies falling under the jurisdiction of the aforesaid Regional Offices directly to the Regional Office concerned, together with the prescribed fee and other relevant documents.

All other applications may be submitted to the Compounding Authority, Cell for Effective implementation of FEMA (CEFA), Mumbai, as hitherto.

(Source: RBI Circular RBI/2011-12/298 A.P. (DIR Series) Circular No. 57 dated December 13, 2011

Foreign investment in Pharmaceutical sector

In terms of Schedule I of the RBI Notification No. FEMA 20/2000-RB dated May 3, 2000, Foreign Direct Investment (FDI) up to 100% is permitted in pharmaceuticals sector under the automatic route of the FDI policy:

The extant FDI policy for pharmaceuticals sector has been reviewed and it has now been decided as under:

(i) FDI, up to 100%, under the automatic route, would continue to be permitted for green field investments in the pharmaceuticals sector.

(ii) FDI, up to 100%, would be permitted for brownfield investment (i.e., investments in existing companies), in the pharmaceutical sector, under the Government approval route.

(Source: RBI circular RBI/2011-12/296 A. P. (DIR Series) Circular No.56 dated December 9, 2011)

Issue of equity/ preference shares by conversion of import of capital goods/ equipments/ pre-operative expenses

RBI has revised the A.P. (DIR Series) Circular No. 74 dated June 30, 2011, whereby issue of equity shares/ preference shares by conversion of import of capital goods, machineries, equipments (including second-hand machineries) and pre-operative/ pre-incorporation expenses (including payments of rent, etc.) was allowed under the Government route, subject to terms and conditions stated therein. The aforesaid circular has been revised as under:

Regional Offices of RBI	Contravention	Threshold limit
Bhopal, Bhubaneshwar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji	Paragraphs 9(1)(A) and 9 (1)(B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000.	For amount of contravention below ₹ 1,00,00,000/- (Rupees one hundred lakh only).
Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi	Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000.	For amount of contravention without any limit.

(Source: RBI Circular A. P. (DIR Series) Circular No.55 dated December 09, 2011)

MFI: New Category of NBFC

RBI has been decided to create a separate category of NBFCs viz; Non-Banking Financial Company-Micro Finance Institution (NBFC-MFI). Consequently there would be following categories of NBFCs:

i. Asset Finance Company (AFC)
ii. Investment Company (IC)
iii. Loan Company (LC)
iv. Infrastructure Finance Company (IFC)
v. Core Investment Company (CIC)
vi. Infrastructure Debt Fund- Non- Banking Financial Company (IDF-NBFC)
vii. Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI).

(Source: RBI Circular RBI/2011-12/290DNBS.CC.PD.No. 250/03.10.01/2011-12 dated December 2, 2011)

Deregulation of interest rates on NRE Deposits and NRO Accounts

In order to provide greater flexibility to banks in mobilising non-resident deposits and also in view of the prevailing market conditions, it has been decided to deregulate interest rates on Non-Resident (External) Rupee (NRE) Deposits and Ordinary Non-Resident (NRO) Accounts [the interest rates on term deposits under Ordinary Non-Resident (NRO) Accounts are already deregulated].

Accordingly, banks are free to determine interest rates on both savings deposits and term deposits of maturity of one year and above under Non-Resident (External) Rupee (NRE) Deposit accounts and savings deposits under Ordinary Non-Resident (NRO) Accounts with immediate effect. However, interest rates offered by banks on NRE and NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits.

The prior approval of the Board/ Asset Liability Management Committee (if powers are delegated by the Board) may be obtained by a bank while fixing interest rates on such deposits.

The revised deposit rates will apply only to fresh deposits and on renewal of maturing deposits. Further, banks have been advised to closely monitor their external liability arising on account of such deregulation and ensure asset-liability compatibility from systemic risk point of view.

(Source: RBI Circular RBI/2011-12/303 DBOD.Dir.BC. 64 / 13.03.00/2011-12 dated December 16, 2011)

IMPORTANT DATES WITH REGULATOR (S)

COMPLIANCE CHECKLIST

January-February 2012

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 January, 2012	Section 192	Income Tax Act, 1961	February 7, 2012	Income Tax Authorities
2	Deposit TDS from Contractors Bill, Payment of Commission or Brokerage, Professional/Technical Services Bills/ Royalty made in January, 2012	Section 194-H Section 194-I Section 194-C Section 194-J	Income Tax Act, 1961	February 7, 2012	Income Tax Authorities
B.	**CENTRAL EXCISE & SERVICE TAX**				
3	Pay Service Tax in Form TR-6, collected during January, 2012 (by persons other than individuals, proprietors and partnership firms)	Rule 6	Service Tax Rules, 1994	February 5, 2012 (February 6, 2012 in case of e-payments)	Service Tax Authorities
4	Pay Central Excise duty on the goods removed from the factory or the warehouse during January, 2012	Rule 8	Central Excise Rules, 2002	February 5, 2012 (February 6, 2012 in case of e-payments)	Excise Authorities
5	Submission of CENVAT Return for January, 2012	Rule 9(7)	CENVAT Credit Rules, 2004	February 10, 2012	Excise Authorities
C.	**SEBI & CORPORATE LAWS**				
6	Submission of audited/ un-audited quarterly financial results	Clause 41	Listing Agreement	Within 45 days from end of each quarter	Stock Exchange
7	Submission of limited review report (in case of unaudited financial results)for the quarter ended December 30, 2011	Clause 41	Listing Agreement	Within 45 days from end of each quarter	Stock Exchange
C.	**LABOUR LAWS**				
8	Payment of monthly Employees' Provident Fund (EPF) dues	Para 38	EPF Scheme, 1952	Within 15 days from close of every month	Provident Fund Authorities
9	Monthly return of Provident Fund for the previous month w.r.t. international workers	Para 36	EPF Scheme, 1952	Within 15 days from close of every month	Provident Fund Authorities
10	Monthly return of Provident Fund for the previous month (other than international workers)	Para 38	EPF Scheme, 1952	Within 25 days from close of every month	Provident Fund Authorities

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