

Tax & Corporate News Bulletin



Vol. VI, No. 6, February-March 2011

From the Editor...

Dear Reader,

On March 11, 2011, a massive earthquake struck the Northern Pacific coast of Japan, followed by a devastating tsunami that swept over cities. Recorded as 8.9 on the Richter scale, it was the most powerful earthquake ever to hit the country. As the nation struggled with rescue efforts, it also faced the worst nuclear emergency since Chernobyl, as explosions and leaks of radioactive gas took place from the reactors at Fukushima Daiichi nuclear power plants. Let's hope that the future damage could be contained by the concerted efforts of the global community.

Back home, having ceded to the Opposition on the setting up of Joint Parliamentary Committee and amidst various allegations of serious governance lapses, the Government presented the Finance Bill, 2011 on February 28, 2011.

The fine prints of the Finance Bill 2011 revealed what the Finance Minister opted not to amplify in his speech. The proposals relating to imposition of MAT on SEZs, Alternate Minimum Tax (AMT) on LLPs, Point of Taxation Rules, etc. have been sharply criticised by the trade as well as the service providers.

The Finance Minister took a U-turn towards Policy on SEZs by introducing several tax proposals and thereby changing the tax regime of SEZs adversely and abruptly. Besides Trade & Industry, there has been sharp reaction from the Ministry of Commerce & Industry as well on the SEZ related proposals. Surprisingly, through the Finance Bill, it is proposed to amend the SEZ Act also, which is widely seen as backdoor amendment and against the constitutional spirit.

The proposal of imposition of AMT on LLPs, will make concept of LLP unpopular even before it catches momentum. No wonder, Ministry of Corporate Affairs finds it a spoilsport and cries foul play.

Changing rules, albeit within the powers of the Government, if done without manifested 'public interest' and 'reasonability' causes would always be seen to be against the constitutional spirit and continue to raise question as to the 'stability of law' or, as the case may be, the 'stability of policy' by the different sections of stakeholders in the economy. Is someone listening?

Yours truly,

Hitender Mehta
hitender@vaishlaw.com

Inside...

FINANCE BILL 2011

- ◆ Income Tax
- ◆ International Tax
- ◆ Service Tax
- ◆ Special Economic Zones

INCOME TAX - RECENT JUDGMENTS

- ◆ Income from offshore supply of equipment not taxable in India
- ◆ Payment of satellite transmission services rendered by foreign satellite operators - not taxable as royalty

CORPORATE LAWS/ SEBI

- ◆ Delegation of powers by Central Government to Regional Directors and Registrar of Companies
- ◆ Payment of commission to non-whole time Directors of Company
- ◆ Speedy incorporation of companies & establishment of place of business in India by foreign companies
- ◆ Payment of MCA fees electronically
- ◆ Simplification of process of acquiring DIN
- ◆ Managerial remuneration in unlisted companies having no/ inadequate profits
- ◆ Exemption under section 211 of Companies Act
- ◆ Arbitration mechanism of Stock exchanges
- ◆ Extension of Easy Exit Scheme for inoperative/ defunct companies

FEMA/ RBI

- ◆ Annual return on foreign liabilities & assets reporting by Indian companies
- ◆ Minimum Capital to Risk Asset Ratio for all deposit taking NBFCs
- ◆ Scheme of financing of off-grid and decentralized solar applications

COMPLIANCE CHECKLIST

VAISH ACCOLADES

*Celebrating 40 years of
professional excellence*

**For further details,
please contact....**

Ajay Vohra

ajay@vaishlaw.com

Vinay Vaish

vinay@vaishlaw.com

Bomi F. Daruwala

bomi@vaishlaw.com

For Private Circulation

Vaish Associates Advocates ...Distinct. By Experience.

FINANCE BILL 2011

INCOME TAX

Tax rates

- ✧ For corporates (including Education Cess and Secondary & Higher Education Cess)

Particulars	Existing rates (AY 2011-2012)	Proposed rates (AY 2012-2013)
Domestic companies having total income exceeding Rs 1 crore		
i) Normal provisions	33.22%	32.44%
ii) MAT	19.93%	20.01%
Foreign Companies	42.23%	42.02%

- ✧ Minimum Alternate tax increased from 18% to 18.5% (plus applicable surcharge and cess) on book profits.
- ✧ Surcharge on domestic companies reduced from 7.5% to 5% and on foreign companies from 2.5% to 2%.

Anti Avoidance Measures

- ✧ With a view to discourage transactions undertaken by resident in India with persons located in countries / jurisdictions which avoid providing information requested by the Indian Government such countries or jurisdictions, anti avoidance measures have been proposed in the Act.



- ✧ It is proposed to insert section 94A to deal with transactions undertaken with persons located in notified countries or jurisdictions, as follows:

- If an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A and such transaction shall be deemed to be an international transaction within the meaning of section 92B and accordingly, transfer pricing regulations shall apply to such transaction.

- No deduction in respect of payment made to any financial institution located in a notified jurisdiction, shall be allowed unless, the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income-tax authority acting on its behalf, to seek relevant information from the said financial institution;
- No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act, unless the assessee maintains such other documents and furnishes the information as may be prescribed.
- If any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of failure to do so, the amount shall be deemed to be the income of the assessee.
- Where any person located in the notified area is entitled to receive any sum or income or amount on which tax is deductible under the Act, tax shall be deducted at the highest of the following rates:
 - at the rate or rates in force;
 - at the rate specified in the relevant provision of the Act; or
 - at the rate of 30%.

Proposals relating to Special Economic Zones



Under the existing provisions of section 115JB(6) of the Act, a developer of SEZ or a unit in SEZ is not liable to pay Minimum Alternate Tax (MAT). It is proposed to levy MAT under section 115JB on book profit

derived by a developer from the business of development of SEZ and also book profit derived from unit set up in SEZ. The SEZ developer/ unit in SEZ shall be liable to pay MAT w.e.f. assessment year 2012-13 and onwards.

It is also proposed to amend section 115-O to provide for levy of dividend distribution tax on the dividend declared, distributed or paid by the SEZ developer on or after June 1, 2011.

Alternate Minimum Tax on Limited Liability Partnerships

In the Finance Bill, 2011, following provisions relating to levy of Alternate Minimum Tax (AMT) on Limited Liability Partnerships (LLPs) have been introduced:



Under the existing provisions of the Act, LLP as defined in LLP Act, 2008, was included within the meaning of "firm" under section 2(23) of the Income-tax Act.

Accordingly, the provisions of the Act relating to partnership firms were made applicable to LLP, as well. Consequently, provisions of MAT under section 115JB, which apply to companies, were not attracted in the case of LLP.

It is proposed to levy AMT on LLPs (w.e.f. assessment year commencing April 1, 2012 onwards) by inserting Chapter XII-BA, consisting of sections 115JC, 115JD, 115JE and 115JF, in the Act.

Section 115JC provides that where the regular income tax payable by the LLP for a previous year is less than the alternate minimum tax (i.e., the amount of tax computed on adjusted total income @ 18.5%) payable for such previous year, the adjusted total income would be deemed to be the total income of such LLP, on which income-tax @ 18.5% would be payable.

Section 115JD provides for allowing carry forward and set off of tax credit for MAT paid by LLP in a previous year under section 115JC, to the extent such payment exceeds the regular income-tax payable, for that year for a period of ten assessment years immediately succeeding the assessment year for which such tax credit became allowable and set off of the same against regular income-tax payable, to the extent regular income tax payable exceeds alternate minimum tax payable under section 115JC for the year in which such set off is claimed.

Comments: The proposed levy of AMT @ 18.5% is likely to discourage the formation of LLPs.

Deduction for generation and distribution of power or laying of distribution lines



Under the existing provisions of section 80-IA(4)(iv) of the Act, deduction is available in respect of profits and gains derived by an undertaking

engaged in, inter alia, the following businesses, which commence operation before March 31, 2011.

- generation or generation and distribution of power;
- transmission or distribution by laying network of new transmission or distribution lines;
- substantial renovation and modernization of the existing network of transmission or distribution lines.

In order to provide impetus to the assessee engaged in the aforesaid businesses, it is proposed to extend the terminal date for commencing operations for claiming deduction, viz., March 31, 2011, by one more year to March 31, 2012.

INTERNATIONAL TAX

Taxation of dividends from foreign subsidiaries



It is proposed to insert section 115BBD to provide that income by way of dividends received by an Indian company from its foreign subsidiary shall be taxed in the hands of the Indian company at the

concessional rate of 15%. The normal rate of taxation is 30%.

For the purposes of the aforesaid section, the dividend shall however, not include deemed dividend under section 2(22)(e) of the Act, i.e., loans and advances received by a shareholder from a company in which he beneficially holds 10% or more shares carrying voting power. 'Subsidiary' has been defined as a foreign company in which the Indian company holds 26% or more* in nominal value of equity share capital of such foreign company.

It is also provided that no deduction in respect of any expenditure shall be allowed against the aforesaid dividend income.

* as per finance minister's statement in Lok Sabha on March 22, 2011

Taxation of Infrastructure Debt Fund

- ✧ A new section 10(47) is proposed to be inserted, to facilitate setting up of dedicated debt funds, in accordance with guidelines to be prescribed by the Central Government, with the objective of raising long term, low cost funds from abroad for the infrastructure sector in India.
- ✧ The income of the notified debt fund would be exempt from tax under section 10(47). Section 115A of the Act is proposed to be amended to provide for levy of tax in respect of interest on such notified infrastructure debt fund paid to non-resident/ foreign company, at concessional rate of 5% (as against normal tax rate of 20%) of the gross amount of such interest income.
- ✧ A new section 194LB is proposed to be inserted to provide for tax deduction at source @ 5% by the notified infrastructure debt fund on the interest paid by such fund to the non-resident/ foreign company. Section 139 is proposed to be suitably amended to provide for return filing obligation by such debt funds, where the total income of the fund without giving effect to the provisions of section 10(47) exceeds the maximum amount not chargeable to tax.



Liaison offices to file annual statement with the Income Tax department

- ✧ Most of the liaison offices set up by foreign companies in India, by virtue of being prohibited to carry out income-earning activities in India, do not file return of income in India.
- ✧ It is now proposed to insert new section 285 to provide that every non-resident, who has set up a liaison office in India under the Foreign Exchange Management Act, 1999, shall be required to furnish, within sixty days from the close of the financial year, a statement of its activities in prescribed form to the Income Tax authorities. The prescribed form and details will be notified in due course.

SERVICE TAX



New categories of services proposed to be added to the list of taxable services

It is proposed to include the following new categories of taxable services-

- ✧ Restaurant service [s. 65(105)(zzzzv)]
- ✧ Hotel service [s. 65(105)(zzzzw)]

Modification of existing taxable services

✧ **Authorised Service Station service [s. 65(105)(zo)]**

It is proposed to expand the scope of authorized service station service to include repair, re-conditioning, restoration, or decoration or any other similar services of any motor vehicle. Three wheeler scooter auto rickshaw and motor vehicle meant for goods carriage have been kept outside the purview of service tax. Earlier, services provided only by authorized service stations were within the purview of service tax. However, it is now proposed to cover services provided by any person as taxable service.

✧ **Life Insurance service [s. 65(105)(zx)]**

It is proposed to expand the scope of life insurance services to cover all services including in relation to management of investments. This shall be done by substituting new taxable service whereby the restriction 'in relation to the risk cover in life insurance' is being removed.

✧ **Club or Association service [s. 65(105)(zzze)]**

The scope of club or association service has been proposed to be amended to include services provided to non members as well. The definition of 'club or association' has also been proposed to be amended.

✧ **Legal consultancy service [s. 65(105)(zzzzm)]**

It is proposed to expand the scope of legal consultancy service to include-

- Services of advice, consultancy or assistance provided by a business entity to individuals;

- Representational services provided by any person to a business entity; and

- Services provided by arbitrators to business entities;

Services provided by individuals to other individual will remain outside the levy.

✧ **Business Support Services [s. 65(105) (zzzq)]**

The scope of business support service is being expanded to include operational or administrative assistance of any kind.

✧ **Commercial Training or Coaching Service [s. 65 (105) (zzc)]**

The scope of commercial training or coaching service is proposed to be expanded to include all coaching and training that is not recognized by law irrespective of whether the institute is providing any other course(s) recognized by law.



Introduction of Point of Taxation Rules, 2011

Point of Taxation Rules, 2011 have been introduced and proposed to be made effective from July 1, 2011*. These rules are to determine the point in time when the services shall be deemed to be provided. The general rule will be that the time of provision of service will be the earliest of the following dates:



- ✧ Date on which service is provided or to be provided
- ✧ Date of invoice
- ✧ Date of payment

Consequential changes have also been made in the Service Tax Rules, 1994 to alter the payment of service tax from receipt of payment to provision of service and also to permit adjustment of tax when service is not finally provided.

Further, Rules have also been framed for determination of point of taxation in case of change of rate of tax as well as continuous supply of service.

[Source: Notification No. 18/2011-ST dated March 1, 2011]

* as per finance minister's statement in Loksabha on March 22, 2011

Review of Service Tax exemption/ refund mechanism for SEZ developers and units



- ✧ The Government has issued a Notification no. 17/2011-ST dated March 1, 2011 has for the purposes of granting exemption/ refund of service tax on services provided to a SEZ bringing clarity on the

refund mechanism of service tax in relation to SEZs. The said notification supersedes Notification No. 9/2009-ST dated March 3, 2009. The new notification provides for the following-

- Criteria for determination of 'wholly consumed' services has been laid down.
- No service tax required to be paid if the same are meant to be 'wholly consumed' within SEZ, including services liable to tax on reverse charge basis under section 66A of the Finance Act, 1994.
- All services received by an entity in SEZ not having any other DTA operations to be eligible to constitute 'wholly consumed services'.
- Refund of other services not wholly consumed with SEZ available on pro-rata basis, i.e., ratio of SEZ turnover to the total turnover.
- A new rule has been introduced in CENVAT Credit Rules, 2004 to waive the requirements of rule 6 in case of services provided, without payment of tax, to a SEZ unit for its authorized operations.
- Procedure for claiming the above exemption and refund has been provided.

GST Bill introduced in Lok Sabha

The Finance Minister on March 22, 2011 introduced a Constitution Amendment Bill in the Lok Sabha to enable the implementation of 'Goods and Service Tax' (GST), the indirect tax regime that would subsume levies like excise, service tax and sales tax. The Bill seeks to amend the Constitution to authorise both the Centre and the States to levy taxes on supply of goods and services. This Bill is a culmination of three Draft Amendment Bills circulated by the Central Government.

INCOME TAX-RECENT JUDGMENTS

Income from offshore supply of equipment not taxable in India

The Delhi High Court (HC), in case of *LG Cable Ltd.* [ITA No. 703/2009] held that income arising from offshore supply of equipment in a turnkey contract was not taxable in India.



In the aforesaid case, LG Cable Limited, a non-resident, ('the assessee') was awarded two contracts by PGCIL; one for onshore services and the other for supply of equipment from overseas.

The Revenue held that the income from offshore supply was taxable due to the fact that (i) offshore and onshore contracts were inter-dependent and; (ii) property in offshore equipment did not pass to the buyer until the equipment was erected in India.

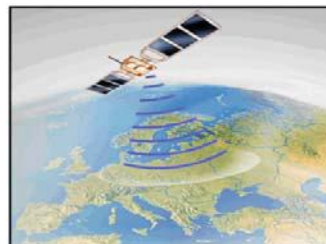
The Delhi High Court, following the ratio laid down by the Supreme Court in the case of *Ishikawajima Harima* [288 ITR 402], held that the income arising to the assessee from offshore supply was not taxable in India. The HC observed, as follows:

- ✧ The offshore supply agreement clearly mentioned that the property in the goods was to pass to PGCIL outside India; i.e. Korea;
- ✧ Even if a PE existed, the PE did not take any part in offshore supply of equipment and therefore, in view of Explanation I(a) to section 9(1)(i), no income could be deemed to accrue or arise in India in respect of offshore supply.
- ✧ The fact that part of the consideration for offshore supply was payable upon successful commissioning of the equipment or that the contracts were turnkey contracts made no difference to the fact that the title to the equipment passed outside India;
- ✧ There was no allegation that the contract price was artificially loaded towards offshore supply to claim a higher amount as non-taxable in India.

Comments: This ruling reiterates the principle that if all activities relating to offshore supply are carried out outside India, income from offshore supply will not be liable to tax in India. It also follows that in order that the activities performed outside

India (and therefore exempt from tax in India) in case of a turnkey contract, are not attributed to the PE, it is important to ensure that the consideration towards offshore portion of the contract is not artificially 'loaded' to claim higher tax exemption.

Payment for satellite transmission services rendered by foreign satellite operators – not taxable as royalty



The Delhi High Court (HC), in case of *Asia Satellite Communications Co. Ltd. v. CIT* [ITA no.131/134 of 2003] has ruled that income arising to a non-resident from use of satellite transponder capacity is not taxable in India.

The assessee, a company incorporated in Hong Kong, entered into agreements with several non-resident TV channels for utilizing the transponder capacity available on the assessee's satellites for amplification of the signals and down linking of the same to the desired area (footprint), including India.

The Revenue contended that there was a direct business connection of the assessee on account of satellite footprint and the ultimate source of income, being the advertisers, was located in India. Income received by the assessee from customers was also 'royalty' since it was consideration for use of 'process' of amplifying and relaying the signals.

Regarding the Revenue's contention that income could be deemed to accrue or arise in India on account of 'business connection', the HC held that the assessee did not have a business connection in India since no operations were carried out in India by the assessee.

Regarding the issue of royalty under section 9(1)(vi), the HC held that the transponder, as indeed the satellite, was in control of the assessee; therefore, it could not be held that the customers 'used' the 'process' in the transponder. In fact the satellite and transponder were utilized by the satellite user (the assessee) for rendering amplification and relaying services to the customer. Therefore, the assessee was held not liable to tax in India in respect of payment received by it from the customers.

Comments: The above decision appreciates the distinction between 'use' of 'process' or 'equipment' by the payer for his business purposes and use of 'process' or 'equipment' by the

payee to provide services to the payer. In the former case, the consideration could be termed as royalty whereas the latter is a case of rendering of services. It also reiterates the relevance of OECD Model Commentary in interpreting terms which are common to the Indian tax laws and the Double Taxation Avoidance Conventions.

CORPORATE LAWS/ SEBI

Delegation of powers by Central Government to Regional Directors and Registrar of Companies

The Central Government has delegated its powers under the following sections of the Companies Act, 1956 to the Regional Directors at Mumbai, Kolkata, Chennai, Noida and Ahmedabad:

Section 22	Rectification of name of Company
Sections 224(3), 224(4), 224(7) and 224(8a)	Appointment and remuneration of auditors
Proviso to Section 297(1)	Contracts in which particular directors are interested
Section 394A	Notice for applications under Sections 391 and 394
Section 400	Notice for applications under Sections 397 and 398
Second proviso to section 439 (5) and section 439(6)	Winding up petition
Section 496(1)(a)	Time period for calling of general meeting in the event of winding up
Section 508(1)(a)	Time period for calling of meeting of creditors in the event of winding up
Section 551(1)	Exemption from filing of information as to pending liquidations
Section 555(7)(b)	Money paid into the Companies Liquidation Account
Proviso to section 555(9)(a)	Remittance of money to be paid by liquidator into Companies Liquidation Account
Section 627	Production and inspection of books where offence suspected

The Central Government has delegated its powers under the following sections of the Companies Act, 1956 to the Registrar(s) of Companies-

Section 21	Change of name by Company
Section 25	Power to dispense with "Limited" in name of charitable or other company
Proviso to section 31(1)	Alteration of articles effecting converting of a public company into a private company
Section 108(1D)	Grant of extension of validity of instrument of transfer
Section 572	Change of name for purposes of registration

[Source: MCA Notification F. No 5/ 07/ 2011-CL-V dated March 17, 2011]

Payment of MCA fees electronically



The MCA has decided to accept payments of value upto ₹ 50,000 for MCA 21 services only in electronic mode w.e.f. March 27, 2011. For payments of value above ₹ 50,000, stakeholders would have the option to make payment in electronic mode or paper challan upto October 1, 2011. W.e.f. October 1, 2011, such payments shall also have to be made in electronic mode.

[Source: MCA General Circular dated March 9, 2011]

Speedy incorporation of companies and establishment of principal place of business in India by foreign companies



The MCA has made the following recommendations-

- Only Form-I shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online.
- A separate category termed 'Incorporation Forms' shall have the highest priority while processing. The said category shall include Forms 1A, 37, 39, 44 and 68.
- Average time taken for incorporation of company reduced to one day.

[Source: General Circular No. 6/2011 dated March 8, 2011, MCA, Govt. of India]

Payment of commission to non-whole time Directors of Company under section 309(4) of the Companies Act, 1956

The MCA has decided that a company shall not require the approval of Central Government for making payment of remuneration by way of commission to its non-whole time director(s) in addition to sitting fee, if the total commission to be paid to all those non-whole time directors does not exceed 1% of the net profit of the company if it has a whole time director(s) or 3% of the net profit of the company if it does not have a managing director or whole time director(s).



[Source: General Circular No. 4/2011 dated March 4, 2011, MCA, Govt. of India]

Simplification of the process of acquiring Directors Identification Number (DIN)

The MCA, after re-examining the process of issue of DIN, as enumerated under section 266 B of the Companies Act, 1956, has simplified the burdensome and protracted process of allotment of DIN. Application for DIN will now have to be made online, along with the necessary documents, prescribed fee and verification by the applicant to be attached with the eForm. (No challan payment and physical submission of documents will be allowed).

[Source: General Circular No: 5/2011 dated March 4, 2011, MCA, Govt. of India]

Arbitration mechanism of stock exchanges - Applicability of the provisions of the Limitation Act, 1963

In furtherance of Circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010, which, inter alia, prescribed that the limitation period for filing an arbitration reference shall be governed by the provisions of the Limitation Act, 1963, SEBI in exercise of its power under Section 11 of the Securities and Exchange Board of India Act, 1992 and Section 10 of the Securities Contracts (Regulation) Act, 1956 hereby modifies the limitation period to three years in terms of Limitation Act, 1963, which shall be applicable to the following cases:



- (a) where three years have not yet elapsed and the parties have not filed for arbitration with the stock exchange, or
- (b) where the arbitration application was filed but was rejected solely on the ground of delay in filing within the earlier limitation period of six months; and three years have not yet elapsed.

[Source: Circular No: CIR/MRD/DSA/2/2011 dated February 9, 2011, SEBI]

Managerial remuneration in unlisted companies having no/ inadequate profits



The MCA has amended Schedule XIII of the Companies Act 1956 to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/ inadequate profits, provided they meet the other conditions stipulated in the Schedule like passing of a special resolution of shareholders, approval of remuneration by the remuneration committee and absence of default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 days in preceding financial year before the date of appointment of such managerial person.

[Source: Press Note F. No: 14/3/2011-CL-VII dated February 8, 2011, MCA, Govt. of India]

Exemption under Section 211 of Companies Act, 1956

The MCA, in exercise of the powers conferred by sub-section (3) of section 211 of the Companies Act, 1956 has exempted the following classes of companies from compliance with some of the requirements stated in paragraphs of Part-II of Schedule VI of the Companies Act, 1956, subject to the condition that its Board of Directors have given consent with regard to non disclosure of information and the fact of grant of the exemption under this notification and conformance to the prescribed Accounting Standards is disclosed in the notes to the accounts and that the company shall ensure that its financial documents represent a true and fair state of affairs of its finances.

1. Companies producing Defence Equipments including Space Research;
2. Export Oriented company (whose export is more than 20% of the turnover);
3. Shipping companies (including Airlines);
4. Hotel companies (including Restaurants);
5. Manufacturing companies/multi-product companies; and
6. Trading companies

[Source: MCA Notification S.O. 301 (E). dated February 8, 2011]

MCA extends Easy Exit Scheme for inoperative/ defunct companies

In furtherance to MCA General Circular No. 6/2010 dated December 3, 2010, MCA has extended the Easy Exit Scheme to provide an opportunity to inoperative / defunct companies to get

their names struck off from the register of companies through a simplified process compared to a tedious winding up procedure. The scheme shall be in operation upto April 30, 2011.

[Source: MCA General Circular No. 1/2011 dated February 3, 2011]

RBI/FEMA

Introduction of annual return on foreign liabilities and assets reporting by Indian companies and discontinuation of the part B of form FC-GPR

In order to capture the statistics relating to Foreign Direct Investment (FDI), both inward and outward in a more comprehensive manner as also to align it with international best practices, it has been decided to replace Part B of the Form FC-GPR by a separate 'Annual Return on Foreign Liabilities and Assets'.



- ✧ The Annual Return should be submitted by July 15 of every year to the Director, Balance of Payment Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Mumbai.
- ✧ The Balance Sheet for the reporting year should also be enclosed along with the return.
- ✧ The Return should be submitted by all the Indian companies which have received FDI and/ or made Overseas Investment in the previous year(s) including the current year.
- ✧ The information given in the return should be based on audited balance sheet. However, in case balance sheet is not audited, the information may be submitted based on unaudited figures. The balance sheet may be forwarded in due course. After auditing, if there are major differences in the reported figures, revised return may be submitted along with a copy of balance sheet.
- ✧ These directions shall come into force with immediate effect, i.e., March 15, 2011.

[Source: A.P. (DIR Series) Circular No. 45 dated March 15, 2011]

Scheme of financing of off-grid and decentralized solar (photovoltaic and thermal) applications as part of the Jawaharlal Nehru National Solar Mission (JNNSM)

Government of India, Ministry of New and Renewable Energy (MNRE) has formulated a scheme on financing of Off-Grid and Decentralized Solar (Photovoltaic and Thermal) applications as part of the JNNSM. Under the said scheme, banks may extend subsidized loans to entrepreneurs at interest rates not exceeding



5% where refinance of 2% from Government of India is available. The lending at interest rates not exceeding 5% per annum where refinance of Government of India is available, would not be considered to be a violation of Base Rate Guidelines as issued by RBI.

[Source: Notification No. RBI/2010-11/411- DBOD.Dir.BC. 81/13.03.00/2010-11 dated February 21, 2011]

All deposit taking Non-Banking Financial Companies (NBFCs) – Minimum Capital to Risk Asset Ratio (CRAR) fifteen percent w.e.f. March 31, 2012



RBI has decided to align the minimum capital ratio of all deposit taking as well as systemically important non-deposit taking NBFCs to 15%. Henceforth, all deposit taking NBFCs shall maintain a minimum capital ratio consisting of Tier I and Tier II capital, which shall not be less than 15% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items w.e.f. March 31, 2012.

[Source: Notification No: RBI/2010-11/408- DNBS.PD/CC.No.211/03.02.002/2010-11 dated February 17, 2011]

CSR INITIATIVE

Scholarship meet



The half yearly Vaish Associates Public Welfare Trust scholarship meet was held on January 29, 2011 and January 30, 2011. The scholarship was awarded to around 230 students. The scholarship criterion this year stands modified, the minimum percentage being 70%.

Reproductive and child health workshop



Vaish Associates Public Welfare Trust organized an interactive workshop on February 15, 2011 for pregnant and lactating women at Tarang Pahadi centre, Mehrauli. Dr. Santosh Sahi, President Women Health Care Organisation talked about reproductive and child health in general, with special emphasis on hygiene, sanitation, health & nutrition during pregnancy, right age for pregnancy, interval between two pregnancies and common problems during pregnancy.

IMPORTANT DATES WITH REGULATOR (S)

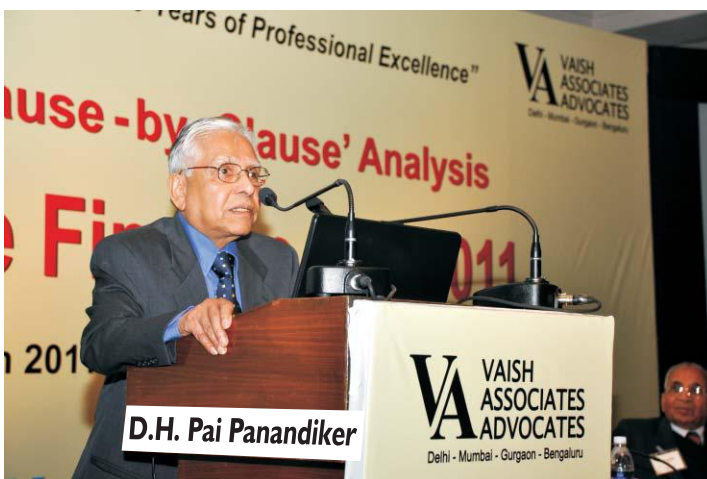
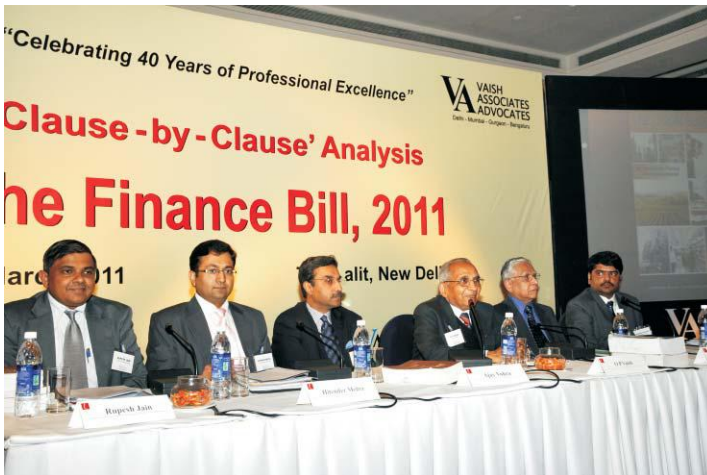
COMPLIANCE CHECKLIST

March - April, 2011

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 March, 2011	Section 192	Income-tax Act, 1961	April 7, 2011	Income-tax Authorities
2	Deposit TDS from Contractor's Bill, Payment of Commission or Brokerage, Professional/ Technical Services bills/ Royalty made in March, 2011	Section 194-H Section 194-I Section 194-C Section 194-J	Income-tax Act, 1961	April 7, 2011	Income-tax Authorities
3	Issue certificate in prescribed form for TDS during financial year ending March 31, 2011	Section 203	Income-tax Act, 1961	May 31, 2011	Income-tax Authorities
B. CENTRAL EXCISE & SERVICE TAX					
4	Pay Service Tax in Form TR-6, collected during March, 2011 by persons other than individuals, proprietors and partnership firms	Rule 6	Service Tax Rules, 1994	March 31, 2011	Service Tax Authorities
5	Submission of CENVAT Return for March, 2011	Rule 9(7)	CENVAT Credit Rules, 2004	April 10, 2011	Excise Authorities
6	Pay Central Excise duty on the goods removed from the factory or the warehouse during March, 2011	Rule 8	Central Excise Rules, 2002	March 31, 2011	Excise Authorities
C. SEBI & CORPORATE LAWS					
7	Submission of audited/un-audited quarterly financial results	Clause 41	Listing Agreement	Within 45 days from the end of the quarter	Stock Exchange
8	Submission of Limited Review Report (in case of un-audited financial results above)	Clause 41	Listing Agreement	Within 45 days from the end of the quarter	Stock Exchange
D. LABOUR LAWS					
9	Payment of monthly Employees' Provident Fund (EPF) dues	Para 38	EPF Scheme, 1952	April 15, 2011	Provident Fund Authorities
10	Monthly return of Provident Fund for the previous month w.r.t. international workers	Para 36	EPF Scheme, 1952	April 15, 2011	Provident Fund Authorities
11	Monthly return of Provident Fund for the previous month (other than international workers)	Para 38	EPF Scheme, 1952	April 15, 2011	Provident Fund Authorities

SEMINAR ON UNION BUDGET 2011-12

Finance Bill 2011: Clause by clause analysis



Vaish Associates, Advocates organized a clause-by-clause analysis of the Finance Bill 2011 on March 2, 2010 at Hotel Lalit, New Delhi. Mr. O. P. Vaish, Senior Advocate made opening remarks and made interceptions on various tax proposals. Mr. Ajay Vohra, Managing Partner chaired the session and guided the deliberations. Noted economist Mr. D.H. Pai Panandiker gave an overview of economic policy announcements. The presentations were made by the team comprising of Mr. Rupesh Jain (Income Tax), Mr. Hitender Mehta (Service Tax) and Mr. Vishwanath Shukla (Customs & Central Excise).

VAISH ACCOLADES

✧ **Megha Suri** was adjudged the 'Women of the Tournament- Corporate' in the Inter-Company Racket Tournament organized by Mail Today on February 26 and 27, 2011 at DDA Siri Fort Sports Complex. Vaish Team comprising Hitender Mehta, Vaibhav Choukse, Megha Suri and P Sandhya made upto the quarterfinals of the tournament.



✧ **Sachit Jolly** was invited to judge the 2nd All India Corporate Law Moot Court Competition held on February 19, 2011 organized by the National Law School, Delhi. He was also invited to judge the 10th Amity National Moot Court Competition on March 12, 2011 wherein more than 20 laws schools from all over India participated. Besides, he was invited to judge the Indian National Rounds of the Louis M. Brown International Client Counseling Competition on March 13, 2011 organized by the National Law School, Delhi.



(lInd L to R) Mr. Vinay Vaish, Mr. Aftab Seth, Former Indian Ambassador to Japan and Mr. Hitender Mehta seen with the JRI team

✧ **Vinay Vaish** and **Hitender Mehta** were invited to make a presentation on 'Success and failure factors of cross border alliance with Indian companies' at a seminar organized by Japan Research Institute in Tokyo, Japan on February 21, 2011.



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. All images, pictures, logos and trade marks appearing in the newsletter are property of their respective owners.

We may be contacted at:

DELHI

Flat Nos. 5-7
10, Hailey Road
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-2332 0484
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre
Dr. S. S. Rao Road, Parel
Mumbai - 400012, India
Phone: +91-22-4213 4101
Fax: +91-22-4213 4102
mumbai@vaishlaw.com

IP & IT laws Division

903, 9th Floor, Indraprakash Bldg
21, Barakhamba Road
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-4352 3668
ipitlaws@vaishlaw.com

GURGAON

803, Tower A, Signature Towers
South City-I, NH-8
Gurgaon - 122001, India
Phone: +91-124-454 1000
Fax: +91-124-454 1010
gurgaon@vaishlaw.com

Indirect Tax Division

1105, 11th Floor
Tolstoy House
Tolstoy Marg
New Delhi - 110001, India
Phone: +91-11-4925 2525
Fax: +91-11-4351 8415

BENGALURU

Royal Arcade No. 6, 80 Ft. Road
Koramangala Industrial Area
Bengaluru - 560 095, India
Phone: +91-80-4228 8501-02
Fax: +91-80-4228 8503
bangalore@vaishlaw.com

© Vaish Associates, 2011, India. All rights reserved with Vaish Associates, 10, Hailey Road, Flat No. 5-7, New Delhi-110001, India.

Editor: Hitender Mehta

Editorial Team: Bomi F. Daruwala, Hemant Puthran, P. Sandhya, Rupa Radhakrishnan, Rupesh Jain

www.vaishlaw.com