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INCOME TAX

TDS on transfer of immovable property

Finance Act, 2013 had introduced section 194-IA in the Income-tax Act, 1961 to bring high value realty transactions under the ambit. The new section, effective from June 1, 2013, provides for deduction of tax at source (TDS) at the rate of one per cent (1%) of the consideration amount in cases where the consideration for transfer of immovable property exceeds INR 5,000,000/-. The tax needs to be deducted at the time of payment or at the time of credit to the account of the transferor, i.e., seller. The aforesaid section, it may be noted applies even to individual payers.

In order to keep the procedural requirements relating to TDS in relation to the aforesaid transactions simple, the requirement of obtaining tax deduction account number (TAN) by the deductor has been done away with.

The other procedural compliances in this regard have been notified by the CBDT *vide* Notification No. 39/2013 dated May 31, 2013, and are summarized below –

- The tax deducted has to be remitted electronically within a period of seven days from the end of the month in which deduction is made and is to be accompanied by a challan-cum-statement in Form No. 26QB;
- The certificate for deduction of tax at source in Form No. 16B (which shall be electronically generated), shall be furnished to the payee within fifteen days from the due date for furnishing challan-cum-statement in Form No. 26QB.

No disallowance under section 40(a)(ia) where tax deposited by due date of filing return, even before AY 2010-11

In the case of *Rana Builders: 142 ITD 205,* the Rajkot Bench of the Tribunal held that the amendment brought about by the Finance Act, 2010 to Section 40(a)(ia) of the Income-tax Act, 1961 ("the Act") was retrospective and applied to earlier years. In terms of the said amendment, where assessee has deducted tax at source on payment made by him in conformity with

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Chapter XVII-B and deposited the same on or before the due date specified in section 139(1), even though the such amount was not deposited before the end of the previous year, disallowance under section 40(a)(ia) could not be made. The said amendment has been held to be clarificatory and therefore retrospective.

Exemption under section 54 available in respect of purchase of more than one residential unit

In the case of *CIT v Syed Ali Adil: 352 ITR 418,* the Andhra Pradesh High Court held that where the net consideration received on sale of property was eligible utilized for purchasing two separate flats, exemption under section 54 of the Act was available in respect of the aggregate cost of both the flats even if such units were (i) separated by a strong wall; and, (ii) purchased from two different vendors and under separate sale deeds. The High Court held that the decision of the Special Bench of the Tribunal in *ITO v. Sushila M. Jhaveri: 292 ITR (AT) 1* taking the view that deduction under that section is available only in respect of one residential unit was not correct.

Investment in Shares of Subsidiaries abroad – Not covered by Transfer Pricing provisions

The Hyderabad Bench of the Tribunal recently held in the case of *Vijai Electricals Ltd. ITA No. 842/HYD/2012* that investment made by an assessee in shares of its subsidiaries outside India does not qualify as an "international transaction" under section 92B of the Act since there is no income arising in such transactions and hence the same was outside the purview of transfer pricing regulations.

Double deduction admissible where ingredients of different provisions fulfilled

In the case of *ACIT v. C. Ramabrahmam : 57 SOT 130,* the Chennai Bench of the Tribunal held that an assessee can include interest paid on housing loan in cost of acquisition for computation of capital gains under section 48, even if the said amount had already been claimed deduction under section 24(b) while computing "Income from house property". The Tribunal observed that deduction under section 24(b) and computation of capital gains under section 48 of the Act are different provisions and one does not exclude the operation of the other.

Appellate Authority cannot uphold action of CIT u/s 263 on fresh/ different grounds

In *Spectra Shares and Scrips Pvt. Ltd. v. CIT: 354 ITR 35,* the Andhra Pradesh High Court held that where the Commissioner of Income Tax (CIT) had set aside the assessment on a particular ground, it was not open for the Tribunal to affirm the order of the CIT on grounds other than the one mentioned by the CIT in setting aside the assessment.

SERVICE TAX

Service Tax Amnesty Scheme

The amnesty scheme for non-filers and non-payers of Service Tax as proposed in the Finance Bill 2013 has been notified as the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (the 'Scheme'). Accordingly, the Central Government has made the Service Tax Voluntary Compliance Encouragement Rules, 2013 which provide for the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues.

Form and manner of declaration: The declaration under sub-section (1) of section 107 of the Finance Act, 2013 (the 'Act'), in respect of tax dues under the Scheme shall be made in Form VCES -1.

Form of acknowledgment of declaration: The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within 7 working days from the date of receipt of the declaration.

Payment of tax dues: The tax dues payable under the Scheme along with interest, under section 107 of the Act shall be paid to the credit of the Central Government in the manner prescribed. The CENVAT credit shall not be utilised for payment of tax dues under the Scheme.

Form of acknowledgement of discharge: The designated authority shall issue an acknowledgement of discharge. The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest.

(Source: No.10/2013-Service Tax dated May 13, 2013)

CORPORATE LAW / SEBI

Amendments to SEBI (ESOS & ESPS) Guidelines, 1999 and Equity Listing Agreement- Clarification

SEBI *vide* Circular No. CIR/CFD/DIL/3/ 2013 dated January 17, 2013 prohibited the listed entities from framing any employee benefit schemes involving acquisition of its own securities from the secondary market by inserting (i) Clause 35C to the Equity Listing Agreement which provided that all employee benefit schemes of a listed company involving its securities shall be in compliance with the SEBI (Employee Stock Option Schemes and Employee Stock Purchase Schemes) Guidelines, 1999 (**'SEBI ESOP Guidelines'**) and any other guidelines, regulations etc. framed by SEBI in this regard. The said clause also provided that all the employee benefit schemes already framed and implemented by the company involving dealing in its securities, before the said amendment shall be aligned with and made to conform to SEBI ESOP Guidelines by June 30, 2013, and (ii) Clause 22B to the SEBI ESOP Guidelines which provided that no ESOS/ESPS shall involve acquisition of securities from the secondary market.

SEBI *vide* Circular No. CIR/CFD/DIL/7/ 2013 dated May 13, 2013 has issued certain clarifications on its earlier Circular dated January 17, 2013.

1. **Applicability of the Circular:** The aforesaid Circular dated January 17, 2013 is applicable to all employee benefit schemes involving the securities of the company provided that the schemes are set up, managed or financed by the company directly or indirectly. Thus, the circular shall be applicable if any of the following conditions are satisfied:

   a) if the company has set up the scheme or the trust/ agency managing the scheme; or

   b) if the company has direct or indirect control over the affairs of the scheme or the trust/ agency managing the scheme; or

   c) if the company has extended any direct or indirect financial assistance to the employee benefit schemes or the trust/ agency managing such schemes.

2. **Extension of time limit:** The time limit for alignment of the existing employee benefit schemes with the SEBI ESOP Guidelines has been extended from June 30, 2013 to December 31, 2013. However, further grant of options from the date of the circular i.e. January 17, 2013, have to be strictly in accordance with SEBI ESOP Guidelines.

3. **Holding of securities acquired by trusts prior to January 17, 2013:** The employee benefit trusts which have already acquired securities of the company from secondary market before the date of the said Circular i.e. January 17, 2013, may continue to hold such securities beyond December 31, 2013, provided that the schemes have been aligned with SEBI ESOP Guidelines and such securities are used only in accordance with such aligned schemes.

4. **Continued holding of securities by non-ESOP employee benefit schemes:** Existing employee benefit schemes involving securities of the company which does not involve granting of options to/ purchase of securities by employees shall be permitted to either:

   a) hold the securities of the company already acquired by them beyond December 31,

2013 provided the schemes have been aligned with SEBI ESOP Guidelines; or

b) dispose - off the securities of the company held by them by December 31, 2013.

5. **Additional Disclosures:** Listed companies shall disclose the following information in respect of employee benefit schemes, involving securities of the company, which are not in alignment with SEBI ESOP Guidelines, to the stock exchanges in the prescribed format:

   a) the details of benefits granted/ shares allotted in the past upto January 17, 2013 - by June 30, 2013;

   b) the details of benefits due/ options granted and pending exercise as on January 17, 2013 - by June 30, 2013; and

   c) the details of allotments made/ benefits granted post January 17, 2013 up to December 31, 2013 - within 7 days from the end of each quarter.

(Source: SEBI Circular No.CIR/CFD/DIL/7/2013 dated May 13, 2013)

Scheme of Arrangement under the Companies Act, 1956 – Clarification on revised requirements for the Stock Exchanges and Listed Companies

SEBI *vide* Circular No. CIR/CFD/DIL/5/ 2013 dated February 4, 2013 had prescribed revised requirements for seeking exemption from SEBI from the requirements of Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 ('SCRR') by the listed Companies, which were desirous of getting their equity shares listed after undertaking a scheme of arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956 (amalgamation/ merger/ reconstruction/ reduction of capital, etc.).

SEBI *vide* Circular No. CIR/CFD/DIL/8/ 2013 dated May 21, 2013 has issued certain clarifications and modifi-cations to its earlier Circular dated February 4, 2013. The following are some of the major changes/ clarifications provided by the said Circular:

1. **Applicability of the Circular:** SEBI has clarified that Circular dated February 4, 2013 shall be applicable to all listed companies undertaking a scheme of arrangement, whether or not, exemption from the requirements of Rule 19(2)(b) of SCRR is sought.

2. **Submission of Valuation Report:** Under the circular dated February 4, 2013, the listed companies seeking exemption were required to submit a Valuation Report by an Independent Chartered Accountant to Stock Exchanges. SEBI has now clarified that 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed company/ resultant company. For the said purpose, SEBI has also provided definition and illustrations for the term 'change in shareholding pattern'.

3. **Voting requirements under the scheme:** The circular dated February 4, 2013, under paragraph 5.16, provided that the scheme of arrangement submitted with the Hon'ble High Court for sanction shall provide for obtaining shareholders' approval through special resolution passed through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. SEBI has now amended the said paragraph 5.16 and provided that the said requirement shall be applicable only in certain cases where

promoter, promoter group, related parties of the promoter or promoter group, associates of promoter or promoter group, subsidiary(ies) of the promoter or promoter group of the listed company are involved.

Further, SEBI has also provided that the scheme shall provide that the same shall be acted upon only if the votes cast by public shareholders in favor of the proposal are more than the number of votes cast by public shareholders against it.

(Source: SEBI Circular no. CIR/CFD/DIL/8/2013 dated May 21, 2013)

Comprehensive guidelines on Offer For Sale (OFS) of Shares by Promoters through the Stock Exchange Mechanism

SEBI had issued comprehensive guidelines on OFS of Shares by Promoters through the Stock Exchange Mechanism vide Circular No. CIR/MRD/DP/18/2012 dated July 18, 2012 as amended by Circular No. CIR/MRD/DP/04/2013 dated January 25, 2013.

Paragraph 5 (b) of the said guidelines, provided that the Sellers shall announce the intention of sale of shares at least one clear trading day prior to the opening of offer. SEBI has amended the said provision and now the Sellers shall be required to announce the intention of sale of shares at least on the day prior to the offer for sale.

(Source: SEBI Circular no. CIR/MRD/DP/17/2013 dated May 30, 2013)

SEBI's interim order in the matter of non-compliance of the Minimum Public Shareholding norms:

SEBI has passed interim order against certain listed companies which have failed to comply with the minimum public shareholding norms prescribed under Rule 19 (2) (b) and Rule 19A of Securities Contract (Regulation) Rules, 1957, directing that, till the period such non-compliant companies comply with the minimum shareholding requirements:

1. Voting rights and corporate benefits with respect to the excess of proportionate promoter/ promoter group shareholding of such non-compliant companies shall be frozen;
2. The promoters/ promoter group and directors of such non-compliant companies shall be prohibited from buying, selling or otherwise dealing in securities of their respective companies, in any manner, except for the purpose of complying with the minimum public shareholding requirement; and
3. The shareholders forming part of the promoter/promoter group and/or the directors of the non- compliant companies shall be restrained from holding any new position as director in any listed company.

(Source: SEBI Order WTM/PS/08/CFD/June/2013 dated June 4, 2013)

Power of ROCs to obtain declaration/ affidavits from subscribers/ first directors at the time of incorporation

The Ministry of Corporate Affairs has clarified that the Registrar of Companies ('ROCs') may obtain declaration/ affidavits from subscribers/ first directors, first at the time of incorporation of the company and subsequently from directors whenever the company changes its objects, to the effect that the company/ directors shall not accept deposits unless the applicable provisions of the Companies Act, 1956, Reserve Bank of India Act, 1934 and SEBI Act, 1992 and rules/ directions/ regulations made thereunder are duly complied with.

(Source: MCA General Circular no. 11/2013, dated May 29, 2013)

RBI / FEMA

Multi Brand Retail Trading

The State of Himachal Pradesh has given its consent to allow 51% Foreign Direct Investment ("FDI") in Multi Brand Retail Trading under the Government approval route, subject to the satisfaction of other conditions as entailed in the FDI Policy. With this, Himachal Pradesh becomes 11th State/ Union Territory to join Andhra Pradesh, Assam, Delhi, Haryana, Jammu & Kashmir, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman & Diu and Dadra and Nagar Haveli who have already allowed 51% FDI in multi brand retail trading sector under Government approval route in their respective States/ Union Territories.

(Source: Press Note 1 (2013 series) dated June 3, 2013)

FDI Policy –Definition of 'Group Company'

The Government has decided to incorporate the following definition of 'group company' in the Consolidated FDI Policy dated April 5, 2013:

"2.1.15 'Group company' means two or more enterprises which, directly or indirectly, are in a position to:

(i) exercise 26% or more of voting rights in other enterprise; or

(ii) appoint more than 50% of members of board of directors in the other enterprise."

(Source: Press Note No. 2 (2013 Series) dated June 3, 2013)

Export of Goods and Software – Realisation and Repatriation of export proceeds

RBI has, with immediate effect, reduced the period of realization and repatriation to India, of the amount representing the full value of goods or software exported, from twelve months to nine months from the date of export. This provision shall remain valid till September 30, 2013.

However, the provisions relating to realization and repatriation of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India shall remain unchanged.

(Source: RBI/2012-13/503 A.P. (DIR Series) Circular No. 105 dated May 20,2013)

Issue of equity shares scheme allowed under the Government route against pre-operative/pre-incorporation expenses

RBI *vide* its earlier A.P. (DIR Series) Circular No. 74 dated June 30, 2011 read with A.P. (DIR Series) Circular No. 55 dated December 9, 2011, permitted issuance of equity shares/ preference shares under the Government route against pre-operative/pre-incorporation expenses subject to compliance of terms and conditions stated in the said Circular. RBI has now amended paragraph 3 (II) of the said Circular.

	Earlier Condition	Revised condition
Paragraph 3 (II) (c) of A.P.(DIR Series) Circular No. 74 dated June 30, 2011	Payments should be made directly by the foreign investor to the company. Payments made through third parties citing absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI	Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations

(Source: RBI/2012-13/502 A.P. (DIR Series) Circular No. 104 dated May 17, 2013)

LABOUR LAWS

Enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

On April 22, 2013, the Government has enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"). The Act seeks to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassments and for matters connected therewith or incidental thereto.

The Act has been enacted almost 16 years after the Supreme Court of India passed its landmark judgment in 1997 in the case of Vishaka and others v. State of Rajasthan, AIR 1997 SC 3011 and laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to sexual harassment at workplace and enforce the right to gender equality of working women.

According to the Act, the term 'sexual harassment' includes any one or more of unwelcome acts or behavior, namely –physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other physical, verbal or non-verbal conduct of a sexual nature.

The scope of the Act extends to the organized sector as well as the unorganized sector. The Act applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying on commercial, vocational, educational, entertainmental, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutes and stadiums, sport complex or competition or games venue, whether residential or not used for training. Further, a workplace covers within its scope places visited by the employees during the course of employment or for reasons arising out of employment –including transportation provided by the employer for the purpose of commuting to and from the place of employment.

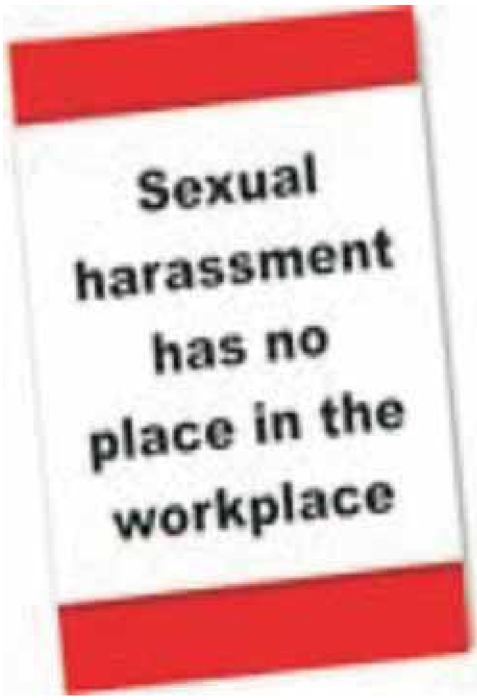
The definition of 'employee' under the Act covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labour, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

The Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees. For establishments having less than 10 employees, the Act requires setting up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment.

The Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

The Act provides for safeguards in case of false or malicious complaint of sexual harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment.

Where an employer fails to constitute an ICC or does not comply with any provisions contained therein, the Act prescribes a penalty of up to INR 50,000. Repeated non-compliance of the provisions of the Act could result in the higher punishment and/ or even cancellation of business license or registration of the entity to conduct licenses.



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