

NEWSLETTER

April, 2012

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Raising FII/NRI limits

- ◆ FII investment limit of 24% to the sectoral cap/statutory limit and NRI investment limit of 10% to 24 % may be raised.
- ◆ For the above, a necessary intimation must be sent to the RBI, along with a Certificate from the Company Secretary.
- ◆ For effective monitoring of foreign investment ceiling limits, the RBI has fixed cut-off points that are two percentage points lower than the actual ceilings.

Dear Reader,

We thank you for your consistent patronage and believe in our firm and capabilities. We appreciate your wonderful response with your valuable feedbacks. With this encouragement we bring you the April Issue (2012) of our Newsletter.

The monthly newsletter is essentially dedicated to make our readers updated on the significant changes/ occurrences in the different sectors of Indian legal and regulatory system. This newsletter includes various updates on RBI, FEMA, FDI, Banking, Labour Laws etc. We hope to serve you through this newsletter and trust our endeavor to fortify our bonds together...

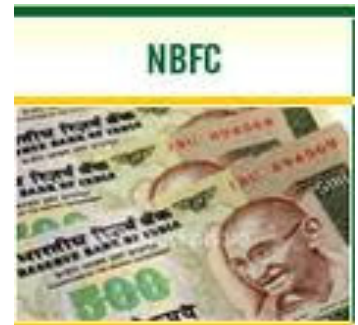
Thanks & Regards

OPK Team

CORPORATE & TRANSACTIONAL

Fair Practices Code for NBFCs

The Reserve Bank vide its circular dated 28th September, 2006, issued guidelines on Fair Practices Code (FPC) for all NBFCs to be adopted by them while doing lending business. The guidelines inter alia, covered general principles on adequate disclosures on the terms and conditions of a loan and also adopting a non-coercive recovery method. A review of the guidelines is made in view of the creation of a new category of NBFCs viz; NBFC- MFIs and also rapid growth in NBFCs' lending against gold jewelry. The reviewed guidelines have incorporated the instructions on 'Complaints about excessive interest charged by NBFCs' and on 'Clarification regarding re-possession of vehicles financed by NBFCs' for reference. The NBFCs may note to make suitable amendments in their existing FPC. The FPC so modified should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular and should be published and disseminated on the web-site of the company, if any, for the information to the public.



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Diamond Dollar Accounts (DDA)

With a view to further rationalizing the monthly reporting mechanism of DDA it has now been decided that AD Category-I Banks should submit quarterly reports instead of monthly reports to RBI, Mumbai, giving details of the name and address of the firm / company in whose name the DDA is opened, along with the date of opening / closing the DDA with effect from the quarter ended March 2012, by the 10th of the month following the quarter to which it relates.

Intimation for raising FII/NRI limits for investment

As per the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 registered Foreign Institutional Investors (FII) and Non-Resident Indians (NRI) are allowed to purchase/sale shares and convertible debentures of an Indian company (through registered brokers) on recognized stock exchanges in India. It is hereby clarified that the Indian company raising the aggregate FII investment limit of 24 per cent to the sectoral cap/ statutory limit, as applicable to the respective Indian company or raising the aggregate NRI investment limit of 10 per cent to 24 per cent, should necessarily intimate the same to the Reserve Bank of India, immediately, along with a Certificate from the Company Secretary stating that all the relevant provisions have been complied with. It may also be noted that the Reserve Bank of India monitors the ceilings on FII/ NRI/ PIO investments in Indian companies on a daily basis. For effective monitoring of foreign investment ceiling limits, the Reserve Bank has fixed cut-off points that are two percentage points lower than the actual ceilings. On reaching the aggregate ceiling limit, the Reserve Bank advises all designated bank branches to stop purchases on behalf of their FIIs/ NRIs/ PIOs clients. The Reserve Bank has also informed the general public about the 'caution' and the 'stop purchase' in these companies through a press release and has updated list regarding the same is placed on the RBI web-site.

Business Correspondents for Banks

In a bid to set up the financial inclusion, RBI has permitted all Business Correspondents (BC) of any one particular bank to conduct business for other bank as well at the point of customer interface, a retail outlet or a sub-agent. Further, the terms and conditions governing the contract between the bank and the BC should be carefully defined in written agreements and subjected to a thorough legal vetting. Moreover, banks will be fully responsible for the actions of the BCs and their retail outlets / sub agents. In this connection, RBI has allowed inter-operability system at the retail outlets or sub-agents of BCs (i.e. at the point of customer interface), provided the technology available with the bank, which has appointed the BC, supports inter-operability, subject to the following conditions:

- ◆ The transactions and authentications at such retail outlets or sub-agents of BCs are carried out on-line;

- ◆ The transactions are carried out on Core Banking Solution (CBS) platform; and
- ◆ The banks follow the standard operating procedures to be advised by the Indian Banks' Association (IBA). However, the BC or its retail outlet or sub-agent at the point of customer interface would continue to represent the bank, which has appointed the BC.



Mega Leather Cluster

The Central Government has approved a sub-scheme titled "Mega Leather Cluster" with an allocation of INR 600 crore under Indian Leather Development Programme (ILDLP) for implementation during the remaining of 11th plan and 12th plan period. The Mega Leather Cluster (MLC) sub-scheme will replace the erstwhile scheme of Leather Parks under ILDP. The scheme targets industrial clusters/locations with high growth potential, which require strategic interventions by way of providing world class infrastructure support. The Scheme targets industrial clusters/locations with high growth potential, which require strategic interventions by way of providing world class infrastructure support. The project cost will cover various infrastructure developments like Core Infrastructure, Special Infrastructure, Production Infrastructure, HRD & Social Infrastructure, R&D Infrastructure and Export Services related infrastructure. The Government of India will provide assistance

limited to 70 per cent of the project cost as grant in aid for all components of the project, except the cost of land, subject to a maximum ceiling of INR 125 crore per cluster. A Special Purpose Vehicle (SPV) will have to be set up by the entrepreneurs for development and management of park. The SPV will be a company registered under Companies Act, 1956 formed by the stakeholders, particularly a group of willing entrepreneurs that are engaged in the leather sector.

- ◆ A sub-scheme titled "Mega Leather Cluster" with an allocation of INR 600 crore under ILDP.
- ◆ The Scheme targets industrial clusters/locations with high growth potential, which require strategic interventions by way of providing world class infrastructure support.
- ◆ The Government of India will provide assistance limited to 70% of the project cost as grant in aid for all components of the project, except the cost of land.
- ◆ SPV registered under the Companies Act, 1956 will have to be set up.

Non-Reckoning Fixed Deposits with Banks as Financial Assets



No non-banking financial company shall commence business or carry on the business of a non-banking financial institution without (a) obtaining a certificate of registration (CoR) from RBI and (b) having a net owned fund of INR 25 lakh which was increased to INR. 200 lakh with effect from 21st April, 1999. It has, however, come to the

notice of the Reserve Bank that some NBFCs obtain registration from the Bank, park their funds in fixed deposits with commercial banks but do not commence Non-Banking Financial Institutions (NBFI) activities for several years thereafter. The Auditors of the companies have in these cases also certified that the companies are conducting NBFI activities, justifying the continued holding of the CoR issued by the Bank. It is clarified, that the Reserve Bank issues a Certificate of Registration for the specific purpose of conducting activities. Investments in fixed deposits cannot be treated as financial assets and receipt of interest income on fixed deposits with banks cannot be treated as income from financial assets as these are not covered under the activities mentioned in the definition of "Financial Institution" in Section 45I(c) of the RBI Act 1934. Besides, bank deposits constitute near money and can be used only for temporary parking of idle funds, and/or in the above cases, till commencement of NBFI business.

Guidelines for Credit Rating Agencies

According to SEBI (Credit Rating Agencies) Regulations, 1999 (the Regulations), a credit rating agency (CRA) has been defined as a body corporate which is engaged in the business of rating of securities offered by way of public or rights issues. However it is observed that the CRAs registered with SEBI also carry out rating of other securities / instruments and loans / facilities provided by banks which are not regulated by SEBI. Such ratings are being used by the other regulators or their regulated entities for the specified purposes. Therefore, it is desirable that in addition to the review/accreditation process put in place by these regulators, if any, such ratings should also be governed by the same stringent norms as applicable for rating of securities issued by way of public and rights

issues. In view of the above, it has been decided in consultation with the CRAs and also with other regulators that for the above mentioned ratings, CRAs shall follow the applicable requirements pertaining to rating process and methodology and its records, transparency and disclosures, avoidance of conflict of interest, code of conduct, etc, as prescribed in the Regulations and circulars issued by SEBI from time to time.



BTIs- Review of Regulatory Compliance & Periodic Reporting

In order to strengthen the compliance mechanism and role of the Boards of Bankers to an Issue (BTIs), and to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, it has been decided to review the norms and format for periodic reporting. The revised format includes the status of regulatory compliance and investor grievances redressal. The Board of directors of BTI shall, henceforth, review the report and record its observations on (i) the deficiencies and non-compliances, and (ii) corrective

measures initiated to avoid such instances in future. Accordingly, with effect from half year ending March 2012, the compliance officer of the BTI shall send the report in the revised format in excel format to SEBI at bti@sebi.gov.in on half yearly basis within three months of the expiry of the half year.



Clearing and Settlement of OTC trades

With effect from 16th August, 2010, all SEBI Regulated entities were to report their OTC transactions in CDs and CPs on the FIMMDA reporting platform within 15 minutes of the trade for online dissemination of market information. On 5th March,

2012, it was decided that with effect from 1st April, 2012, all SEBI regulated entities shall settle their OTC trades in CDs and CPs on the lines of already existing process for settlement of OTC trades in corporate bonds, through National Securities Clearing Corporation Limited (NSCCL) and Indian Clearing Corporation Limited (ICCL). All transactions cleared and settled in terms of this circular will be subject to such norms as may be specified by NSCCL and ICCL.

'Opening New Doors' for differently abled persons

CII Northern Region in association with NITTR (National Institute of Technical Teacher's Training & Research) organized ABILITY 2012: Opening New Doors Towards Inclusive Employment of for differently abled persons on 27th March, 2012. The programme highlighted on the placement of differently abled candidates is facilitated through recruitment drives besides others. Jubilant Food Works Ltd (Dominos Pizza), IBM Technologies, Competent Synergies Pvt. Ltd, Fortis Healthcare Ltd and Vardhmaan Textile Ltd interviewed the candidates. 49

candidates turned up for the drive., of which 28 were orthopedically handicapped, 4 were candidates having Polio, 3 Hearing Impairment, 12 Visually Impairment and 2 Cerebral Palsied. 12 candidates have been shortlisted by IBM, though the total number of candidates placed is still not known as we are still awaiting the final list from all the companies subject to specified conditions.



CCI watching Real estate Players

Encouraged by the penalty imposed on the biggest real estate company DLF in a Gurgaon case last August, there has been a rush of complaints at the Competition Commission of India (CCI) against several property majors since then. "At least 200 complaints came to us against real estate players" said a CCI official. With big names such as Hiranandani Infrastructure & Real Estate Company (Hirc), Raheja Developers and Omaxe Group being dragged to the competition watchdog by home owners/buyers, CCI dismissed at least six such cases in the past two months on the plea that these companies did not enjoy the position of dominance in the market. Most complaints that reached CCI cited delay in delivery and biased buyer-builder agreements for filing the cases. DLF was accused of 'abuse of dominance' and titled buyer and titled buyer-builder agreements for three projects- Park Place, Belaire, and recently Magnolia in Gurgaon. The case is in the Competition Appellate Tribunal (COMPAT) at the moment. In view of so many real estate cases coming up at the CCI, National Real Estate Development

Council (Naredco) is planning to come out with a draft national agreement, which will be a model buyer-builder agreement for the industry to follow. It is in dialogue with customers, consumer forums, besides following the CCI recommendations in the DLF case, to draft the agreement. One of the discrepancies that the draft agreement may look at correcting is the clause where a buyer is expected to pay up to 18 per cent interest on defaulting on the installment. However, in case of a delay in delivery by the developer, it pays only one to two per cent as penalty charge.

CCI watching Real Estate Players

- ◆ CCI penalized DLF for 'abuse of dominance' in August, 2011.
- ◆ Established names such as Hiranandani Infrastructure & Real Estate Company (Hirc), Raheja Developers and Omaxe Group have been dragged in this controversy.
- ◆ Most complaints that reached CCI cited delay in delivery and biased buyer-builder agreements for filing the cases. Many cases have been dismissed.



CII wants privatization in Indian Railways

The Confederation of Indian Industry (CII) has urged greater private sector participation in India's railway sector. In its pre-Budget Memorandum to the Railway Ministry, CII has called for clear guidelines to attract private investments. Currently, investment through Public Private Partnership (PPP) represents just 4 per cent of all rail in-

vestment. "Improved project implementation, streamlined and time-bound approval processes, providing terms in projects that will allow investors to gain "reasonable" returns on capital, and more efficient vendor management are some of the areas that can be addressed by the Indian Railways to ensure the growth and sustainability of the sector," noted Mr. Chandrajit Banerjee, Director General, CII. Regarding zero tolerance towards safety and accidents, CII has recommended finalizing various technological and safety related up gradations, such as Automatic Block Signaling, Train Protection & Warning System (TPWS), Anti-Collision Devices, Black Boxes, End of Train Telemetry devices, Train Control Technology and Traffic Management Systems (TMS).

ASSOCHAM suggests 100 per cent FDI in Defence Sector

The government should allow 100 per cent FDI in defence sector so that the country can become self-reliant in production and encourage technology transfers, industry body Assocham has said. At present, India imports about 70 per cent of its defence requirements. "We must recognize that defence production is a capital and technology intensive-sector. To develop a strong industrial base in the country, we need foreign capital and technology," Assocham said. Currently, 26 per cent Foreign Direct Investment (FDI) is allowed in this sector. India can acquire self-reliance in defence production with raising FDI ceiling to 100 per cent, the chamber said. *"The present cap on FDI in the sector has kept away both investments and technology transfer. There is no reason why we should not allow 100 per cent foreign investment in defence*

sector," said Assocham Secretary General D S Rawat. FDI along with usage of advanced technology is a better option for manufacturing defence equipment domestically rather than importing them from abroad, he added.



EXTERNAL AFFAIRS

India's agricultural assistance to Myanmar

Government of India had announced an assistance of USD 10 million for supply of agricultural machinery and implements to Myanmar. Following up on this announcement, 224 state-of-the-art tractors, 26 harvesters, 156 power tillers and related agricultural implements have been handed over to the Government of Myanmar. Totally, 300 tractors, 150 combine harvesters, 288 power tillers and 775 implements have been gifted to Myanmar. These are being distributed to farmers in various regions and states as per the priorities of the Myanmar Government. Agriculture is a priority area of Government of India's assistance programme in Myanmar. Apart from the supply of this machinery and implements, support is being extended by way of education and training in the agricultural as well as livestock and fisheries sector. Setting up of 10 disaster proof rice silos in the cyclone prone delta region was also undertaken under Indian assistance of USD 2 million in 2011.

India- China Border Affairs Meeting

The 1st meeting of the Working Mechanism for Consultation and Coordination on India-China Border Affairs was held in Beijing on 5th - 6th March, 2012. The Indian delegation was led by Shri Gautam Bambawale, Joint Secretary (East Asia) and comprised of representatives of the Ministries of External Affairs, Home Affairs and Defence as well as members of the Indian Army and the Indo-Tibetan Border Police. The talks were held in a constructive and forward looking atmosphere with the common objective of continuing to maintain peace and tranquility in the India-China border areas. The two delegations agreed on the rules governing the functioning of the Mechanism which include convening 1-2 meetings a year, and if required, holding of emergency consultations either through meetings or by telephone/ video conferencing. The two delegations reviewed the situation prevailing in the India-China border areas and noted the adherence by both sides to the various agreements for maintenance of peace and tranquility.

BUDGET Highlights 2012

- ◆ Income tax exemption limit raised to INR 2 lakh to provide relief of INR 2,000 for all assesseees; 20 % tax on income over INR 10 lakh, up from INR 8 lakh.
- ◆ Deduction of up to INR 10,000 from interest from savings bank accounts.
- ◆ Defence to get INR 1.93 lakh crore during 2012-13.
- ◆ Service tax rate raised from 10 % to 12 % to bring in INR 18,660 crore.
- ◆ Number of proactive steps taken on black money (stashed away abroad); information has started flowing in, prosecution to be initiated; White Paper in current session.
- ◆ No change in corporate taxes but measures to enable them better access funds.
- ◆ Withholding tax on external commercial borrowings reduced from 20 % to five per cent for power, airlines, roads, bridges, affordable houses and fertilizer sectors.
- ◆ National Skill Development Fund allocated INR 1,000 crore.
- ◆ Four thousand residential quarters to be constructed for paramilitary forces with an allocation of INR 1,185 crore.
- ◆ National Population Register to be completed in two years.
- ◆ Excise duty raised from 10 to 12 %.
- ◆ Cinema industry exempted from service tax.
- ◆ Branded silver jewellery fully exempt from excise duty.
- ◆ Customs duty on warning systems/track upgrade equipment for railways reduced from 10 % to 7.5 %.
- ◆ Import duty on equipment for iron ore mining reduced from 7.5 to 2.5 %.
- ◆ Allocation of INR 200 crore for research on climate change.
- ◆ Irrigation and water resource company to be operationalised.
- ◆ National mission on food processing to be started in cooperation with state governments.
- ◆ Integrated Child Development Scheme to be strengthened and re-structured with allocation of INR 15,850 crore.
- ◆ Allocation of INR 14,000 crore for rural water supply and sanitation.
- ◆ Infusion of INR 15,888 crore in public sector banks, regional rural banks and NABARD in 2012-13.
- ◆ Infrastructure will require INR 50 lakh crore in 12th Plan, half of this from the private sector.
- ◆ Completion of highway projects 44 % higher than in previous fiscal.
- ◆ External commercial borrowing of up to \$1 billion permitted for airline sector.
- ◆ From 2012-13, full subsidies for providing food security; in other sectors to the extent the economy can bear this.
- ◆ Hope to raise INR 30,000 crore from disinvestments.
- ◆ New equity savings scheme to provide for income tax deduction of 50 % for those who invest INR 50,000 in equity and whose annual income is less than INR 10 lakh.
- ◆ Corporate market reforms to be initiated.
- ◆ Bills on micro-finance institutions, national land bank and public debt management among those to be introduced in 2012-13.
- ◆ Addressing malnutrition, black money and corruption in public life among five priorities in year ahead.
- ◆ GDP growth in 2011-12 estimated at 6.9 %; had to battle double digit inflation for two years juncture where it is necessary to take hard decisions; have to accelerate pace of reforms.

HR and LABOUR LAWS

EPFO goes online



Employees Provident Fund Organization (EPFO) is introducing Electronic *Challan* cum Return (ECR) from April, 2012 for remittance of contributions by all employers with a view to provide:-

- ◆ Greater transparency.
- ◆ Better quality of service to Employees.
- ◆ Greater convenience and ease to Employers.

Employers/Authorized Signatory are required to register their establishment on EPFO website www.epfindia.gov.in for

their user ID and Password with effect from 20th March, 2012 for filing the Electronic *Challan* cum Return (ECR) for wage month of March 2012 (payable in April 2012) onward. The advantages are:

- ◆ Automatic up-dation of accounts on receipt of contribution by EPFO.
- ◆ Employers can download Annual Accounts slips for their employees for the year 2010-2011 onwards from our website.
- ◆ No need to file returns in Form 5, 10, 12A, 3A, 6A by employer of un-exempted establishment and 3PS, 4PS, 5PS, 6PS, 7PS, 8PS by the employees of PF Exempted Establishment.
- ◆ No need for annual up-dation of accounts.

ANTI CORRUPTION LAWS

IT enabled Application for processing complaints online

Central Vigilance Commission has been working towards leveraging IT for not only simplification of processes but also enhancing interaction with all the stakeholders in the fight against corruption. An IT enabled Application for complaints processing online has been developed and implemented in the commission. This Application handles complaints from all sources in electronic form and ensures expeditious disposal. In this process, complaints on which it has been decided to send the same for 'Necessary Action' (NA) are to be forwarded to the CVO concerned by the Commission through this Application. Such complaints sent for necessary action would henceforth not be sent in hard copy and will be transferred electronically. However, the complaint sent for investigation and report to the CVO will continue to be handled/sent by post. In

addition, the CVOs can also send the Monthly Reports electronically through this portal. Emails and SMS systems are also being integrated by this application for sending alerts to all the CVOs and for status updates to the complainants.



ENVIRONMENTAL LAWS

Revised Guidelines for CETPs

The concept of Common Effluent Treatment Plants (CETPs) is economically viable to small scale industrial units SSI. MoEF has been implementing a centrally sponsored scheme for CETPs since 1991. A need was felt to revise the earlier guidelines.

Under the Water (Prevention and Control of Pollution) Act, 1974, every industry has to provide adequate treatment of its effluents before disposal, irrespective of whether it is in stream, land, sewerage system or sea. The small scale industrial units (SSI) are a major contributor to the total industrial pollution load of the country. SSIs, due to their limited size and scale of operations do not find it economically viable to install dedicated pollution control equipment and therefore the concept of Common Effluent Treatment Plants (CETPs) is suitable for them. CETPs help in achieving end-of-pipe treatment of combined wastewater of the SSIs at lower

unit cost and also facilitate better monitoring by the State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs). The Ministry of Environment & Forests (MoEF) has been implementing a centrally sponsored scheme for CETPs since 1991. Thus a need was felt to revise the earlier guidelines for central assistance to CETPs. The Revised Guidelines include:

- ◆ Scope of Central assistance for CETPs
- ◆ Pattern of financial assistance
- ◆ Role of the Project Proponent/Beneficiary
- ◆ Role of the Member Industrial Units
- ◆ Role of the State Government
- ◆ Role of the SPCB/Pollution Control Committee
- ◆ Role of the Central Government / Central Pollution Control Board (CPCB)
- ◆ Checklist for new/up-gradation proposals of CETPs

Guidelines for High Rise Buildings

The relevant issues related to height of buildings, adequacy of fire fighting facilities and other requirements have been deliberated upon by the Expert Appraisal Committee (EAC) for the related sector from time to time before giving its recommendations to this Ministry. The EAC recommended that the height of the building should be linked with the width of the road on which the proposed building is to be located and also the distance of Fire Station from the building so that in case of emergency, the Fire Tender may reach in the shortest possible time. The EAC also stressed the need for mandatory mock-up drills and availability of NOC's from the concerned departments before the start of construction as well as before occupancy. These recommenda-

tions of the EAC have been accepted by the Competent Authority. In light of above acceptance, guidelines are stipulated regarding buildings of different heights whenever building projects are appraised by the EACs.



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AN OVERVIEW:

- Founded by Mr. O.P. Khaitan in 1990. Currently being managed by Mr. Gautam Khaitan as its Managing Partner;
- Well established, reputed, skilled and professionally managed full service Law Firm.
- Long associations with many International law firms in different jurisdictions.
- Quality of Legal Services - immaculate, consistent and impeccable.
- Our Members and Associates - Qualified from National and International Universities.
- Firm's Paramount Concept - "Clients' Satisfaction".
- Retained By - Several National and International Clients with Cross-Border Investment Objectives around the Globe.
- Key Focus - Cross-Border Mergers, Joint-ventures & Acquisition.
- 40 Lawyers + Paralegal and Support Staff of more than 40 people.
- The Office of the Firm-based in the prime location of South Delhi and is established in 4 floors totaling to 12,000 sq. fts. office space.
- The Firm is one of the exclusive members of several international networks of law-firms through which we ensure ready access to formal legal advice to our clients in other jurisdictions around the world.

"What if we can help those things that really matter..."

FROM OUR LAWYER'S DESK

Service tax on lawyers

The Budget 2012-13 has been more or less a balanced budget. At one hand some relief has been given to small taxpayers in Income tax whereas it has been compensated by indirect tax through increase in rates and widening the tax base. According to Notification No. 08/2009 dated 24th February, 2009 the rate of service tax were reduced from 12 per cent to 10 per cent. The said notification has been now rescinded by Notification no. 02/2012 dated 17th March 2012 w. e. f. 1st April, 2012. Thus, now, w. e. f. 1st April, 2012, effective rate of service tax (including education cess and S. H. Cess) has been increased to 12.36 per cent.

The most significant change in the current budget has been with regards to introduction of a negative list of services. The tax base has been widened by making all but the services in the negative list leviable to Service Tax. The Union Government has also laid a road map to introduce the Goods & Services Tax (GST) regime by August. However, this article shall emphasis with regards of Service tax on "legal services". After Notification No.3/2012-ST dated 17th March 2012 comes into force, legal consultancy service providers with a turnover in excess of INR 50 lakhs in the financial year 2011-12, will be "mandatorily required to pay service tax on the raising of invoice or receipt of payment, whichever is earlier, with effect from 1st April, 2012"

As per Notification No. 12/2012 dated 17th March 2012 few taxable services are exempted from the whole of service tax leviable under section 66 B of the Finance Act. Point 6 of the notification states that "Services provided to any person other than a business entity by-

- (a) an individual as an advocate; or
- (b) a person represented on and as arbitral tribunals.

Notification 15/2012 in suppression of the notification No. 36/2004 Service Tax notifies few taxable services and the extent of service tax payable thereon:-

Paragraph I (A) (iv) of the notification states that "The taxable services

provided or agreed to be provided by an arbitral tribunal or an individual advocate opt the support service provided or agreed to be provided by the Government or local authority, to any business entity located in the taxable territory"

Paragraph II (5) enumerates that "100 per cent service tax payable by the person receiving the services in respect of services provided or agreed to be provided by an individual advocate"

Currently, all services provided by an individual practitioner to another individual and advisory services provided by an individual to a business entity are not taxable. However, representational services provided by an individual to a business entity are taxable. Under the proposed dispensation of the Budget 2012-13, all services provided by an advocate to a business entity would be taxable; however the tax would be payable by the business entity under the reverse charge mechanism. This clearly means that an individual advocate shall not be under the liability to pay Service tax, and consequently, he shall not be required to comply with the procedural requirements under the Service Tax regime. The benefit of Notification No. 15/2012-ST dated 17th March, 2012 (which allows the tax liability on services provided by individual lawyers to a business entity to be shifted entirely to the service recipient) has not been extended to a partnership firm "practicing legal profession."

The Delhi High Court Bar Association had already filed a Writ Petition in the Delhi High Court being WP No. 2792 of 2011 to challenge the levy of service-tax on "Legal Consultancy Services". The High Court had issued notice on the Writ Petition and *stayed the application of the impugned provision till disposal of writ petition.*

What remains to be seen is how the said provisions shall be implemented and how the practical difficulties shall be addressed.

* * * * *

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