AMinds
TRANSACTION ADVISORS

Missive
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Dear Patron

Here we are with the Thirteenth successive issue of our monthly ‘Missive’.

We trust you will enjoy reading this Missive, even while soaking in the contents. We would very much appreciate your feedback which consistently helps us in improving and upgrading the contents.

Thanks and regards,

Akhil Bansal
Editor, Knowledge Management Team

The tiger takes a step back before it jumps forward. So, whenever life pulls you back, do not worry it will be going to lead you to a great victory!!!

Budget 2012 – Key Proposals

Direct Tax

- Supreme Court's Judgement in Vodafone overturned; Section 9 amended retrospectively to tax offshore share transfers.
- GAAR introduced to clamp down on tax avoidance; Panel to provide safeguards against GAAR
- Direct Tax Code to be enacted at the earliest after expeditious examination of the report of the Parliamentary Standing Committee.
- Capital gains on sale of residential property - exempt if sale proceeds subscribed as equity of a manufacturing SME for purchase of new plant and machinery
- Tax withholding on transfer of specified immovable property (other than agricultural land) @ 1%; Minimal compliance obligation for transferee.
- Reduction in Securities Transaction Tax (STT) by 20% on delivery transactions
- Beneficial tax rate of 15% on dividend from foreign subsidiary extended by 1 year
- Cascading effect of DDT in multi-layer structure to be rationalized
- Investment link deduction of capital expenditure for certain businesses proposed to be provided at the enhanced rate of 150 per cent.
- DTC rates proposed to be introduced for personal income tax. Personal Tax exemption limit raised to Rs 2 lakhs from Rs 1.8 lakhs. Personal Income Tax Slabs: Up to 2 lakh rupees – NIL; Rs 2– 5 lakh – 10%; Rs 5–10 lakh – 20%; Above Rs 10 lakh – 30%;
- No change in corporate tax rates

Transfer Pricing

- Definition of international transactions broadened to specifically include business restructuring, intra-group financing arrangements etc.
- Transfer pricing provisions (reporting / documentation / penalty) to apply to specified domestic transactions
- Advance pricing arrangements introduced in Finance Bill 2012, aimed at reducing TP litigations and providing certainty for foreign investors.

Indirect Tax

- Service tax base has been broadened by introducing negative list
- Service tax rate raised from 10% to 12%
- PAN as common identification base for Direct and Indirect taxes and under GST regime
- Drafting of model legislation for the Centre and State GST in concert with States is under progress. GST Network (National Information Utility) to be operational by August 2012

FEMA

Foreign venture capital investors get to invest in securities via secondary market

RBI has allowed foreign venture capital investors (FVCI) to invest in eligible securities (equity, equity-linked instruments, debt and debt instruments, debentures of a domestic venture capital undertaking or VC funds, units of schemes/funds set up by a VC fund) by way of private arrangements or purchase from a third party also.

Impact: The move is expected to bring relief to the FVCIs as in some of the deals, VCs have also to part fund the deal by purchasing the promoter's equity.

[RBI/2011-12/45 A.P. (DIR Series) Circular No.93 Dated March 19, 2012]

Foreign Institutional Investor (FII) investment allowed in 'to be listed' debt securities

SEBI registered FIIs/sub-accounts of FIIs can invest in primary issues of Non-Convertible Debentures (NCDs)/ bonds only if listing of such bonds / NCDs is committed to be done within 15 days of such investment. In case the NCDs/ bonds issued to the SEBI registered FIIs / sub-accounts of FIIs are not listed within 15 days of issuance to the SEBI registered FIIs / sub-accounts of FIIs, for any reason, then the FII/ sub-account of FII shall immediately dispose of these bonds/ NCDs either by way of sale to a third party or to the issuer.

Prior intimation to the Reserve Bank of India for raising the aggregate Foreign Institutional Investors / Non-Resident Indian limits for investments under the Portfolio Investment Scheme - Clarification

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 RBI, immediately, as hitherto, along with a Certificate from the Company Secretary stating that all the relevant provisions of the extant FEMA regulations and the FDI Policy, as amended from time to time, have been complied with.

Impact: 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. Once the aggregate net purchases of equity shares of the company by FIIs/NRIs/PIOs reaches the cut-off point of 2 per cent below the overall limit, the Reserve Bank cautions all the designated bank branches not to purchase any more equity shares of the respective company on behalf of any FIIs/ NRIs/ PIOs without prior approval of the Reserve Bank.

Establishment of Branch Offices (BO) / Liaison Offices (LO) in India by Foreign Entities – Delegation of Powers - Clarification

It is now clarified that transfer of assets of Liaison / Branch Office to subsidiaries or other LO / BO or any other entity is permitted only with the specific approval of the Central Office of the Foreign Exchange Department, Reserve Bank of India.

Rationalisation of Overseas Direct Investments by Indian Party

- **Creation of charge on immovable / movable property and other financial assets**

  Proposals from the Indian party for creation of charge in the form of pledge / mortgage / hypothecation on the immovable / movable property and other financial assets of the Indian Party and their group companies may be considered by the Reserve Bank under the approval route within the overall limit fixed (presently 400%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.

- **Reckoning bank guarantee issued on behalf of JV / WOS for computation of Financial Commitment**

  Bank guarantee issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly.

- **Issuance of personal guarantee by the direct / indirect individual promoters of the Indian Party**

  Issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be extended to the indirect resident individual promoters of the Indian Party with same stipulations as in the case of personal guarantee by the direct promoters.

- **Financial Commitment without equity contribution to JV / WOS**

  Keeping in view the business requirement of the Indian party, particularly the legal requirement of the host country, the proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route. AD banks may forward the proposals from their constituents after ensuring that the laws of the host country permit incorporation of a company without equity participation by the Indian party.

- **Submission of Annual Performance Report**

  Where the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS, the Annual Performance Report (APR) may be submitted by the Indian party based on the un-audited annual accounts of the JV / WOS on satisfaction of certain conditions.

- **Compulsorily Convertible Preference Shares (CCPS)**

  Keeping in view the nature of the Compulsorily Convertible Preference Shares (CCPS), it has been decided that Compulsorily Convertible Preference Shares shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

[A.P. (DIR Series) Circular No. 96, Dated -March 28, 2012]

Corporate Law

Time for filing DIN-4 form for furnishing PAN extended to 30th April 2012

This is the fourth time revision of the due date for furnishing PAN details with MCA for Directors, who did not furnish the same at the time for obtaining DIN and haven't furnished as yet. MCA has undertaken this initiative to avoid allotment of duplicate DIN. All the Directors are once again been reminded to furnish PAN through DIN-4 till April 30, 2012 through General Circular No. 4/2012 dated March 09,2012 issued by MCA .

Impact: It is to be noted that if the same is not done, the Ministry may disable DIN and impose heavy penalty on person who fail to ensure the same.

Draft Manual on the functioning of Official Liquidators

The Official Liquidators (OLs) are appointed under Section 448 of the Companies Act, 1956 and on winding up order being made in respect of company; Official Liquidator becomes Liquidator of the company under section 449 of the Companies Act, 1956.

In order to streamline the functioning of OLs and improving their efficiency and bringing uniformity in their working, this Ministry is considering preparing a Manual on the functioning of OLs. Various stakeholders from corporate sector, professionals such as Advocates, Company Secretaries, Chartered Accountants, Valuers etc. are connected with the functioning of the OLs. In addition, members of citizens, opinion makers, practitioners and theorists in the field of administrative and legal reformers may also be interested in these reforms.

MCA – Pay later option for Challans

The ministry has started the 'Pay Later' option on the MCA portal which got effective from March 20, 2012. The option of payment through "Pay Later" mode is applicable on all type of MCA21 payments.

Earlier, payment for MCA21 services is required to be made at the time when the E Form is uploaded and the SRN gets generated. But now the Ministry has introduced 'Pay Later' facility through which user can upload the eForm and can generate SRN for MCA21 services in one step and make the payment at a later point by using the online payment modes of Credit card or Internet banking only.

If the payment is not made within the expiry date as mentioned on the eChallan, the SRN shall be cancelled and no service shall be delivered in respect of the SRN. And the Corporate will have to generate the new SRN and will have to make the payment accordingly.

Impact: The big benefit of such service is that it is not necessary that the challan has to be paid from the same Login rather it can be paid from the different login also. So this option is the 'Big Welcome' from professional point of view.

SEBI

Exemptions from 100% promoter(s) holding in Demat form

SEBI earlier asked the listed companies to make 100% of their promoter(s) share holdings in Demat form through SEBI circulars. Now Sebi has provided some exemptions to promoters from converting their shareholding into demat form. Such exemption shall be applicable to:

- Promoter(s) have sold their shares in physical mode and such shares have not been lodged for transfer with the company; or
- Matters concerning part/entire shareholding of promoters/promoter group are sub judice before any Court/Tribunal; or
- Shares cannot be converted into demat form due to death of any promoter(s);
- Shares allotted to promoter(s) that await final approval for listing from stock exchange and such pendency is less than 30 days or shares that upon receipt of final listing approval from stock exchange are pending conversion to demat and such pendency is less than 15 days.

The Companies have to approach the concerned stock exchanges with documentary evidence for availing such exemptions.

Impact: The relaxation was approved after some companies approached Sebi to seek exemption, as they were facing difficulties while dematerialising their shares. According to the regulator, promoters of a large number of companies have already converted their shareholding into demat form.

CDs, CPs trade to be settled through NSCCL, ICCL from Apr 01, 2012

Market regulator SEBI informed all over-the-counter (OTC) trades in short-term debt papers issued by corporate and banks will be settled through National Securities Clearing Corporation Limited (NSCCL) and Indian Clearing Corporation Limited (ICCL).

It has now been decided that 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 NSCCL and ICCL with effect from April 01, 2012. Even RBI has come out with a notification in this regard.

Impact: CDs and CPs are short term borrowing instruments used by banks and corporates, respectively. Previously, it was mandatory for that all SEBI regulated entities report their OTC transactions in Certificate of Deposits (CDs) and Commercial Papers (CPs) on the FIMMDA reporting platform within 15 minutes of the trade for online dissemination of market information and the scenario has now changed post this notification.

[CIRCULAR No. Cir. /IMD/DF/8/2012, Dated - March 05, 2012].

International Tax

- Payment received / receivable by the applicant in connection with Inspection, Verification, Testing and Certification Services are taxable as FTS **[AUTHORITY FOR ADVANCE RULINGS (INCOME TAX)]**

- IF applicant has taxable income in India he is required to file tax return and tax need to be withhold on payment to him [**AAR**]

- No tax withholding on remittance by Indian head office to foreign branch; Tax holiday available on sales made by Indian head office to foreign branch **[M/s. Semantic Space Technologies Ltd., Hyderabad V/s Dy. Commissioner of Income-tax (ITAT , HYDERABAD)]**

- Shares held by the nominees cannot be considered as held by assessee – S. 47(iv) relief not available if Assessee do not hold 100% of subsidiary - **AAR**

- No Tax to be withhold on Server and Web hosting Charges under Indo-USA DTAA **[ITO (TDS) Vs People Interactive (I) P Ltd (ITAT Mumbai)]**

- Foregoing right to acquire equity shares is transfer and Compensation taxable [**DCIT v. Natco Pharma Ltd (ITAT Hyderabad)]**

- Non-compete fees of capital nature entitled for depreciation as intangible asset **[Serum Institute Of India Ltd. Vs. Addl.C.I.T. (ITAT Pune)]**

- Website is intangible Asset and not software **[Makemytrip (India) Pvt. Ltd. Vs. Deputy Commissioner of Income-tax (ITAT , DELHI)]**

- Payments for supply of technical documents taxable as fees for technical services **[Hindustan Shipyard Ltd (Representative Assessee of FSUE, Rosoboronexport) v. ITO (ITAT VISAKHAPATNAM)]**

- Consideration received for technical services rendered in connection with prospecting for or extraction or production of mineral oil taxable us 115A **[M/s. CGG Veritas Services SA Vs. ADIT (International taxation) – ITAT Delhi]**

- Section 50C does not apply to transfer of tenancy/ leasehold rights **[DCIT vs. Tejinder Singh (ITAT Kolkota)]**

- Unless a non-resident earns income from business operations carried out in India, such income cannot be deemed as accruing or arising in India **[M/s.UPS SCS (Asia) Limited Vs. The Asstt.Director of Income-tax (International Taxation) (ITAT , MUMBAI)]**

Recent Transactions that made the Headlines

In India

- Mahindra Satyam acquires vCustomer's International Operation
- Mahindra Satyam to Merge with Tech Mahindra. Merger ratio fixed at 2:17.
- Nippon signs final agreements to acquire 26 % stake in Reliance Capital
- GVK to pare stakes in Australia projects: report
- L&T Finance acquires Fidelity's Indian MF business
- Heineken may hike stake in UB: reports
- Tilaknagar Industries acquires Srirampur Grains
- Essel Group acquires 10% stake in IVRCL
- TVS Group buys UK-based Universal Components
- Sify to sell stake in MF Global venture to PhillipCapital
- NTT Docomo plans to increase its 26% stake in Tata Teleservices: reports
- SEL Manufacturing acquires Omega Hotels, SEL Aviation
- Tata Global increases stake in Mount Everest Mineral Water
- Apollo Hospitals promoter sells 3.86 lakh shares
- Mahindra Ugine to sell 65 acres of land in Pune
- Force Motors sells more stake in Man Force Trucks
- Khazanah sells stake in Yes Bank for US$105mn: report
- ADAG to buy stake in kitchen appliances firm Butterfly
- Azim Premji trust sells Wipro shares for education drive
- Man Industries announces strategic partnership with Kobe Steel
- PE majors eye stake in Kingfisher Airlines: reports
- Gitanjali Gems arm acquires stake in Japan Company
- HDIL promoters sells 26 lakh shares in Company

Around the world

- Big Fish Acquires Self Aware Games
- Facebook co-founder buys The New Republic magazine
- Dell announces intent to acquire SonicWALL
- Glencore to acquire Canada's Viterra for US$6.1bn
- NEC to buy Covergys support-systems ops
- Amazon.com to acquire Kiva Systems for US$775mn
- Nippon Life to buy 1% in AIA for US$430mn: reports
- UPS to acquire TNT Express for US$6.77bn
- Cisco to acquire NDS for ~US$5bn
- Ericsson to acquire Canadian Wi-Fi firm BelAir Networks
- HSBC to sell general insurance biz in 4 markets for US$914mn
- AIG to Sell Shares of Asian Insurer AIA: reports
- SingTel to acquire Amobee for US$321mn
- Warburg Pincus picks up stake in India's Au Financiers
- Alpha Bank plans to scrap merger with Eurobank: reports

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Our guiding philosophy is "To carry out every professional assignment effectively and efficiently, while upholding the virtues of independence and integrity, without compromising on the creativity and quality of work, so as to provide utmost satisfaction to our clients "

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