

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, MCA, RBI and SEBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at board@icai.org.



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

A. NOTIFICATIONS

1. Computation of Arm's Length Price

In exercise of the powers conferred by the second proviso to Section 92C(2) of the Income-tax Act, 1961, the Central Government has, through this notification, notified that the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2012-13, where the variation between the arm's length price determined under Section 92C and the price at which the international transaction has actually been undertaken does not exceed 5% of the latter.

[Notification No. 31/2012, dated- 17-08-2012]

2. Income-tax (Dispute Resolution Panel) (1st Amendment) Rules, 2012

Section 144C(14) empowers the CBDT to make rules for the efficient functioning of the Dispute Resolution Panel and expeditions disposal of the objections filed by the eligible assessee.

In exercise of the powers conferred by Section 144C(14) of the Income-tax Act, 1961, the Central Board of Direct Taxes had notified Income-tax (Dispute Resolution Panel) Rules, 2012 vide Notification No. 84/2009, dated 20-11-2009.

Rule 3 of the said Rules deal with constitution of the Panel. Sub-rule (2) of Rule (3) empowers the CBDT to assign by name three Commissioners of Income-tax to each panel as members who, in addition to their regular duties as Commissioners, shall also carry on the functions of the panel. This sub-rule has now been amended to empower the CBDT to make such assignment by designation instead of by name.

The existing sub-rule (3) of Rule (3) empowers the CBDT to assign by name another Commissioner

of Income-tax in the place of the outgoing member to carry out the functions of the panel, in a case where any member of the panel is transferred.

Sub-rule (3) has been substituted and now sub-rules (3) and (3A) have been inserted.

New Sub-rule (3) empowers the CBDT to assign one Commissioner of Income-tax as a Reserve Member to each panel, who, in addition to his regular duties as Commissioner, shall also carry on the functions of the panel, in place of any Member, as and when required by the Director General of Income-tax (International Taxation).

Further, as per new sub-rule (3A), the Director General of Income-tax (International Taxation) may, after giving the eligible assessee an opportunity of being heard and after recording the reasons, transfer a case from one panel to another panel.

[Notification No. 33/2012, dated- 24-08-2012]

3. Substitution of Rule 40BA & Form No. 29C

The Finance Act, 2011 had introduced the concept of Alternate Minimum Tax (AMT) in relation to Limited Liability Partnerships (LLPs). The Finance Act, 2012 has extended the levy of AMT to certain persons other than Companies, in order to widen the tax base *vis-à-vis* profit-linked deductions.

Correspondingly, the title and applicability of Rule 40BA requiring the report of an accountant to be furnished under Section 115JC(3) in Form No. 29C have been amended to make the same applicable for certain persons other than companies. Consequent amendments have been made in Form No. 29C.

[Notification No. 34/2012, dated 28-08-2012]

4. DTAA -Agreement for Multilateral Convention on Mutual administrative assistance on tax matters with OECD member countries

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government, has through this notification, notified that all the provisions of the Convention for Mutual

Administrative Assistance on Tax Matters with Organisation for Economic Co-operation and development (OECD) member countries, shall be given effect to in the Union of India with effect from the 1st June, 2012, i.e., the date of entry into force of the said Convention.

[Notification No. 35/2012, dated- 29-08-2012]

5. Insertion of Rules 10F, 10G, 10H, 10-I, 10-J, 10K, 10L, 10M, 10N, 10-O, 10P, 10Q, 10R, 10S, 10T & 44GA - Advance Pricing Agreement Scheme prescribed by CBDT.

Section 92CC has been inserted by the Finance Act, 2012 to empower the CBDT to enter into an advance pricing agreement with any person for determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by such person. However, the CBDT can do so with the approval of the Central Government.

Section 92CC(9) empowers the CBDT to prescribe a scheme, specifying therein a manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Accordingly, in exercise of the powers conferred in Section 92CC(9) read with Section 295 of the Income-tax Act, 1961, the CBDT has inserted Rules 10F to 10T prescribing an Advance Pricing Agreement (APA) Scheme, which shall come into force from the date of its publication in the Official Gazette, i.e., from 30-08-2012.

Further, Rule 44GA has also been inserted to provide for the procedure to deal with requests for bilateral or multilateral advance pricing agreements. In addition, Form No. 3CEC, 3CED, 3CEE have been inserted in Appendix-II of the Income-tax Rules, 1962 which provides for the format of application for a pre-filing meeting, for an APA, for withdrawal of APA request, respectively. Form No. 3CEF provides the format of Annual Compliance Report on APA.

[Notification No. 36/2012, dated 30-08-2012]

6. Form of certificate from an accountant under Section 201(1) and 206C(6A) prescribed

The Finance Act, 2012 had inserted proviso to Section 201(1) which provides that any person who fails to deduct the whole or any part of the tax in accordance with the provisions of chapter XVII on the sum paid to a resident or on the sum credited to the account of a resident, shall not be deemed to be assessee in default in respect of such tax if he furnishes

a certificate from an accountant, in such form as may be prescribed, to the effect that such resident has furnished his return of income under Section 139 taking into account such sum for computing income in such return of income and has paid the tax due on the income declared by him in such return of income.

Corresponding amendments have also been made by the Finance Act, 2012 in the Section 206C(6A) regarding collection of tax at source.

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes, has through this notification, notified Income-tax (11th Amendment) Rules, 2012 to provide for the Form in which the report of the accountant is to be furnished.

Accordingly, following rules have been inserted:

1. Rule 31ACB – The certificate from an accountant under the first proviso to sub-section (1) of section 201 shall be furnished in Form No. 26A.

2. Rule 37J – The certificate from an accountant under first proviso to sub-section (6A) of Section 206C shall be furnished in Form No. 27BA

The said Forms have been inserted in Appendix-II of the Income-tax Rules, 1962.

[Notification No. 37/2012, dated 12-09-2012]

The complete details of the text of the Notifications can be downloaded from the link:

<http://law.incometaxindia.gov.in/DIT/Notifications.aspx>

B. PRESS RELEASES

1. Appointment of Dr. Poonam Kishore Saxena as Chairperson of CBDT

Dr. Poonam Kishore Saxena has taken over as Chairperson, Central Board of Direct Taxes on 21st August, 2012.

[Press release No. 402/92/2006-MC (3 OF 2012), dated 21-08-2012]

2. CBDT explains the Rationale behind APA Scheme

As the Finance Act, 2012 had inserted Sections 92CC and 92CD in the Income-tax Act, 1961 introducing the provisions of Advance Pricing Agreement (APA), the CBDT has, through this press release, explained the rationale behind APA scheme which was notified by the Ministry of Finance through *Notification No. 36, dated 30-08-2012*, and which shall come into effect from the date of its publication in the Official Gazette, i.e. from 30-8-2012.

[Press release, dated 31-08-2012]

3. Comments from stakeholders and general public invited on Expert Committee's report on GAAR and expansion of scope of terms of reference of the Committee

The Expert Committee on GAAR, chaired by Dr. Parthasarathi Shome, has submitted its draft report after analysis of the GAAR provisions and noting the concerns expressed by various shareholders. The draft report of the said Committee has been uploaded on the Finance Ministry's website (<http://finmin.nic.in>) for comments/suggestions from stakeholders and general public.

Further, through this press release, the Government has expanded the scope of the Terms of Reference of the aforesaid Committee to include all non-resident tax payers instead of only FIIs.

[Press release, dated 01-09-2012]

The complete details of the text of the press releases can be downloaded from the link:

<http://law.incometaxindia.gov.in/DIT/Circulars.aspx>

C. TAXPAYER FRIENDLY INITIATIVES

1. Attention-Tax payers of Delhi & Mumbai-Demand Management Fortnight-www.incometaxindia.gov.in

The Income Tax Department is observing the first fortnight of September, 2012 starting from 03-09-2012 to 14-09-2012 as "Demand Management Fortnight". In this regard a single window grievance cell has been set up to receive, acknowledge, and monitor grievance petitions pertaining to demand adjustment by CPC Bangalore for entire CCIT (CCA) Delhi & Mumbai Region. All taxpayers having a grievance pertaining to incorrect arrear demand communicated/adjusted by CPC, Bangalore are required to contact to the nodal officer only and not their jurisdictional assessing officers.

2. View your arrear demand-www.incometaxindia.gov.in

As a Taxpayer friendly initiative, a facility to view details of Arrear Demand of taxpayers as communicated by their Jurisdictional Assessing Officers (A.O.) to the Central Processing Centre (CPC) has now been enabled on the e-filing website, i.e., <https://incometaxindiaefiling.gov.in/portal/index.do>. Taxpayers can now log in to 'My Account' window and view their Arrear Demand.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

A. SERVICE TAX

1. No service tax on vocational education course if offered by the Central/State Government/Local Authority

CBEC has clarified that service tax is not leviable on vocational education/training/skill development courses (VEC) offered by the institution of the Government (Central Government or State Government) or a local authority as in terms of Section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

However, if the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment would be determined by either sub-clause (ii) or (iii) of clause (l) of Section 66D of the Finance Act, 1994.

Sub-clause (ii) refers to "qualification recognised by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognised by any law" will include such courses as are approved or recognised by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

[Circular No.164/15/2012 ST dated 28-08-2012]

The text of the above notifications/circular is available at www.cbec.gov.in



(Matter on FEMA has been contributed by CA. Manoj Shah and CA. Hinesh Doshi)

A. Foreign Direct Investment by citizen/entity incorporated in Pakistan

Press Note No.3 (2012 Series) issued by DIPP dated 1st August, 2012 and

A.P. (DIR Series) Circular No. 16 dated 22nd August, 2012

In terms of Regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security by

a Person Resident outside India) Regulations, 2000 (FDI Regulations), a person resident outside India, who is a citizen of Pakistan or an entity incorporated in Pakistan, is not allowed to purchase shares or convertible debentures of an Indian company under Foreign Direct Investment (FDI) Scheme.

The Government of India has, on 1st August, 2012 reviewed the policy as contained in paragraph 3.1.1 of Circular 1 of 2012 - Consolidated FDI Policy and decided to permit a citizen of Pakistan or an entity incorporated in Pakistan to make investments in India, under the Government route, in sectors/activities other than defence, space and atomic energy.

Consequently, RBI has now decided that notwithstanding anything contained in the aforesaid Regulation, a person who is a citizen of Pakistan or an entity incorporated in Pakistan may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under FDI Scheme subject to the terms and conditions specified in Schedule 1 of the FDI Regulations, provided further that notwithstanding anything contained in Schedule I of the FDI Regulations the Indian company, receiving such foreign direct investment, is not engaged or shall not engage in sectors/activities pertaining to defence, space and atomic energy and sectors/activities prohibited for foreign investment.

B. Risk Management and Inter Bank Dealings

A.P. (DIR Series) Circular No. 13 dated 31st July, 2012 and Press Release: 2012-2013/165 dated 31st July, 2012

In order to provide operational flexibility to the exporters in their hedging operations, the RBI has allowed exporters to cancel and rebook forward contracts to the extent of 25% of the contracts booked in a financial year for hedging their contracted export exposures. Further, to provide some flexibility to AD Category-I banks in managing their Net Overnight Open Position Limit (NOOPL), it has been decided to permit them to exclude their Net Options Position and the positions taken by the overseas branches from their NOOPL, for positions involving Rupee as one of the currencies. Accordingly, limits for such positions, within the overall NOOPL, may be separately fixed by the respective bank's board and communicated to the RBI for approval.

C. Overseas Direct Investments (ODI) – Rationalisation of Form ODI

A.P. (DIR Series) Circular No. 15 dated 21st August, 2012

Regulation 6(2)(iv) of the Notification No. FEMA 120/RB-2004 dated 7th July, 2004 requires the Indian Party to submit the Annual performance Report (APR) in respect of all its overseas investments in the format given in Part III of the Form ODI within 60 days from the date of expiry of the statutory period as specified by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) outside India or such further period as may be allowed by the Reserve Bank.

In view of the above, it has now been decided to amend the Part I of Form ODI and add the following items in Section 'E' and 'F' of Form ODI Part I, to be submitted by every Indian party in terms of the above Regulation, while undertaking ODI transactions.

- (i) In Section 'E', after item (c), item "(d) wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification No. FEMA 120/RB - 2004 dated 7th July, 2004, as amended from time to time, in respect of all the existing JV/WOS of the Indian party has been submitted."
- (ii) In Section 'F', after item (v), a clause "Further, certified that, wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification *ibid*, in respect of all the existing JV/WOS of the Indian party has been submitted."

The revised Section 'E' and 'F' of Form ODI Part I can be referred at:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AE1521082012.pdf>

D. Rationalisation and Liberalisation of External Commercial Borrowings (ECB) - Amendments to the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 [Notification No. FEMA 120/RB-2004 dated 7th July, 2004]

Notification No. FEMA 231/2012-RB/G.S.R.609(E) dated 30th May, 2012 - Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2012

RBI had, vide A.P. (DIR Series) Circular No.27 dated 23rd September, 2011 enhanced the limit of ECB for Eligible borrowers in real sector-industrial sector-infrastructure sector up to \$ 750 million or equivalent per financial year under the automatic route as against

the previous limit of \$ 500 million or equivalent per financial year.

Accordingly, Regulation 21 and Schedule I of the original Regulations has now been amended to reflect the changed position. The amended Regulations shall be deemed to have come into force with effect 23rd September, 2011.

E. Amendments to the Schedule II to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 [Notification No. FEMA 25/RB-2000 dated 3rd May, 2000]

Notification No. FEMA 226/2012-RB/G.S.R.608(E) dated 16th March, 2012 - Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2012

1. Hedging Initial Public Offers (IPO) flows by Foreign Institutional Investors (FIIs) under the Application Supported by Blocked Amount (ASBA) mechanism

RBI had, vide A.P. (DIR Series) Circular No.68 dated 20th May, 2011, permitted the FIIs to enter into foreign currency-rupee swaps for IPO related transient capital flows under the ASBA mechanism subject to terms and conditions specified in the said circular.

Accordingly, suitable amendment is made to Schedule II to the original Regulations by way of this notification. The amended Regulations shall be deemed to have come into force with effect from 20th May, 2011.

2. Facilitating Rupee Trade – hedging facilities for non-resident entities

RBI had, vide A.P. (DIR Series) Circular No.03 dated 21st July, 2011 issued guidelines to allow non-resident importers and exporters to hedge their currency risk in respect of exports from and imports to India, invoiced in Indian Rupees, with Authorised Dealers in India.

Accordingly, Schedule II to the original Regulations is amended to give effect to the aforesaid circular of RBI by way of this notification. The amended Regulations shall be deemed to have come into force with effect from 21st July, 2011.

F. Indian Depository Receipts (IDRs) - Amendments to the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000 [Notification No. FEMA 20/RB-2000 dated 3rd May, 2000] and Foreign Exchange

Management (Transfer or Issue of any Foreign Security) Regulations, 2004 [Notification No. FEMA 120/RB-2004 dated 7th July, 2004]

Notification [No. FEMA 225/2012-RB/G.S.R.607(E) dated 3rd March, 2012 - Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2012 and Notification [No. FEMA 224/2012-RB/G.S.R.608(E) dated 16th March, 2012 - Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) (Second Amendment) Regulations, 2012

RBI had, vide A.P. (DIR Series) Circular No. 05 dated 22nd July, 2009 operationalised the Companies (Issue of Depository Receipts) Rules, 2004 (IDR Rules), notified by the Government of India, as amended from time to time and permitted eligible companies resident outside India to issue IDRs through a Domestic Depository. The permission has been granted subject to compliance with the IDR Rules and subsequent amendments made thereto and the SEBI (DIP) Guidelines, 2000 (then existing), as amended from time to time.

Furthermore, Foreign Institutional Investors (FIIs) including SEBI approved sub-accounts of the FIIs registered with SEBI and Non-Resident Indians (NRIs) may also invest, purchase, hold and transfer IDRs of eligible company's resident outside India and issued in the Indian capital market subject to the aforesaid regulations as amended from time to time.

Accordingly, Notification no. FEMA 20/RB-2000 dated 3rd May, 2000 and FEMA 120/RB-2004 dated 7th July, 2004 are amended to give effect to the aforesaid circular of RBI. The amended Regulations shall be deemed to have come into force with effect from 22nd July, 2009.

G. Amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 [Notification No. FEMA 3/2000-RB dated 3rd May, 2000]

Notification No. FEMA 232/2012-RB/G.S.R.610(E) dated 30th May, 2012 - the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2012

1. External Commercial Borrowings (ECB) for Micro Finance Institutions (MFIs) and Non-Government Organisations (NGOs) - engaged in micro finance activities under Automatic Route

RBI had, vide A. P. (DIR Series) Circular No.59 dated 19th December, 2011 permitted MFIs to

raise ECB upto \$ 10 million or equivalent during a financial year for permitted end-uses, under the Automatic Route. Further, NGOs engaged in micro finance activities were allowed to avail of ECB up to \$ 10 million or equivalent per financial year under the automatic route as against the present limit of \$ 5 million or equivalent per financial year.

Accordingly, suitable amendments are made to the Schedule I of the original Regulations. The amended Regulations shall be deemed to have come into force with effect from 19th December, 2011.

2. Enhancement of ECB limit under the automatic route

RBI had, vide A.P. (DIR Series) Circular No.27 dated 23rd September, 2011 enhanced the limit of ECB for Eligible borrowers in real sector-industrial sector-infrastructure sector up to \$ 750 million or equivalent per financial year under the automatic route as against the previous limit of \$ 500 million or equivalent per financial year.

Accordingly, suitable amendments are made to the Schedule II of the original Regulations. The amended Regulations shall be deemed to have come into force with effect 23rd September, 2011.

H. Limited two way fungibility allowed for IDRs

A. P. (DIR Series) Circular No. 19 dated 28th August, 2012

In terms of A.P. (DIR Series) Circular No.5 dated 22nd July, 2009 issued by RBI, automatic fungibility of IDRs is not permitted.

RBI has now decided to allow limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) subject to the following terms and conditions:

1. The conversion of IDRs into underlying equity shares would be governed by the conditions mentioned in paras 6 and 7 of A.P. (DIR Series) Circular No. 5 dated 22nd July, 2009.
2. Fresh IDRs would continue to be issued in terms of the provisions of A.P. (DIR Series) Circular No. 5 dated 22nd July, 2009.
3. The re-issuance of IDRs shall be allowed only to the extent of IDRs that have been redeemed/converted into underlying shares and sold.
4. There would be an overall cap of \$ 5 billion for raising of capital by issuance of IDRs by

eligible foreign companies in Indian markets. This cap would be akin to the caps imposed for FII investment in debt securities and would be monitored by SEBI.

The issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.

I. Non-resident guarantee for non-fund based facilities entered between two resident entities

A.P. (DIR Series) Circular No. 20 dated 29th August, 2012

RBI has vide Notification No. FEMA 29/2000-RB dated 26th September, 2000 granted general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.

On a review, RBI has decided to extend the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC)) entered into between two persons resident in India. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor shall continue, as hitherto, as detailed in A.P. (DIR Series) Circular No. 28 dated 30th March, 2001.

Further, RBI has also decided to introduce a reporting format to capture such guarantees issued and invoked. Accordingly, Authorised Dealer Category-I banks are required to furnish such details by all its branches, in a consolidated statement, during the quarter, as per the format in Annex to the Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 (and in MS-Excel file through email) so as to reach the Department not later than 10th day of the following month.

J. Hedging facilities for foreign investment by Qualified Foreign Investors (QFIs) –

A.P. (DIR Series) Circular No. 21 dated 31st August, 2012

RBI has decided to allow QFIs to hedge their currency risk on account of their permissible investments (in equity and debt instruments), as per the specified guidelines given in the said circular.

Please refer circular for detailed operational guidelines and other terms and conditions as available at:

<http://rbidocs.rbi.org.in/rdocs/Notification/PDFs/AP21310812FSL.pdf>

K. Overseas Investment by Indian Parties in Pakistan A.P. (DIR Series) Circular No. 25 dated 7th September, 2012

Hitherto, in terms of Regulation 6(2) of the Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2004 (ODI Regulations), investment by Indian Parties in Pakistan is not permitted.

It has now been decided that the overseas direct investment by Indian Parties in Pakistan shall henceforth be considered under the approval route under Regulation 9 of the ODI Regulations.



(Matter on Corporate Laws has been contributed by CA. Jayesh Thakur)

MCA (www.mca.gov.in)

1. Applicability of service tax on commission payable to non-whole time directors

The MCA has issued General Circular No. 24/2012 dated 09-08-2012 in relation to applicability of service tax on commission payable to non-whole time directors of a company under Section 309(4) of the Companies Act, 1956 and approval of Central Government under Sections 309/310 of the Companies Act. In terms of the introduction by the Finance Act 2012 of applicability of service tax to anyone who provides a service not covered under the negative/exempted list and if the value of annual revenue is more than ₹10 lakh. The non-whole time directors of a company are presently not covered under the exempted list and as such, the sitting fee/commission payable to them by the company is liable to service tax. If such Service Tax is paid by the company, it will be deemed to be a part of remuneration under section 198 of the Act and would accordingly increase the remuneration amount of such non-whole time directors. This remuneration could then exceed the limit of 1% profit [under Section 309(4)] of the company when the company has a managing/whole time directors/managers, or, 3% of the profit [under Section 309(4)] of the company if the company does not have a Managing/whole time directors/managers. This

would require prior approval of Central Government under Section 309 and 310 of the Act. The MCA has now clarified that any increase in remuneration of non-whole time director(s) of a company solely on account of payment of service tax on commission payable to them by the company shall not require approval of Central Government under Sections 309 and 310 of the Companies Act even if it exceeds the limit 1% or 3% of the profit [under Section 309(4)] of the company, as the case may be, in the financial year 2012-13. One may refer to the above citation for further details.

2. Employee of a company holding shares of the company up to 0.5% of paid-up share capital

The MCA has issued Notification No. F. No. 14/11/2012-CL-VII dated 16-08-2012 and initially referred to its earlier notification whereby companies were exempted from obtaining the approval of the Central Government for payment of remuneration exceeding the limits imposed by the Companies Act, 1956 in respect of managerial persons not having any interest in the capital of the company and not related to the directors or promoters thereof. The MCA had received a number of representations pointing to the corporate practice of allocating shares by way of qualification shares and/or shares under any scheme for allotment of shares to the employees of the company including under Employees' Stock Option Plan (ESOP). It is now clarified that any employee of a company holding shares of the company up to 0.5% of paid-up share capital under any scheme formulated for allotment of shares to such employees including under Employees' Stock Option Plan or by way of qualification shares are also covered under the category of persons not having any interest in the capital of the company. One may refer to the above citation for further details.



3. Filing of balance sheet and profit & loss account in non-XBRL format – date extended

The MCA has issued General Circular No. 28/2012 on 03-09-2012 extending the date of annual filing of forms 23AC and 23ACA in non-XBRL format without any additional fee or penalty. All companies which are required to file non-XBRL e-forms 23-AC and 23-ACA as per revised schedule VI will now be allowed to file their financial statements without any additional fee/penalty up to 15th October 2012 or within 30 days from the date of their AGM, whichever is later. One may recall that earlier on 02-08-2012 the date was extended to 15th September which is now further extended to 15th October, 2012. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

1. Manner of dealing with audit reports filed by listed companies

The SEBI has issued Circular No. CIR/CFD/DIL/7/2012 dated 13-08-2012 stating that in terms of clause 31(a) of equity listing agreement, listed companies are required to submit six copies of annual reports containing audited annual financial statements to the stock exchanges. While SEBI recognises that in its continuous endeavor to enhance the quality of financial reporting being done by listed companies, it has now decided to put in place a system to monitor the audit qualifications contained in the audit report accompanying the audited annual financial statements submitted by listed companies. One may refer to the exact text of amendments to the equity listing agreement in this regard provided in the Annexure to this circular. Now, listed companies shall be required to submit (as applicable, alongwith copies of annual reports submitted to stock exchanges), a) Form A: unqualified/matter of emphasis report, and, (b) Form B: qualified/subject to/except for audit report. The formats are provided as part of Annexure to this circular. These forms shall be signed by the a) Chief Executive Officer/Managing Director, b) Chief Financial Officer, c) Auditor and d) Chairman of the Audit Committee. The information submitted as per these forms shall also draw attention to relevant notes in the annual financial statements, management's response to qualifications in the directors' report and comments of the Board/Chair of the Audit Committee. A specific procedure is mandated for the stock exchanges to be observed to process the audit reports accompanying the audited annual financial statements submitted by listed companies alongwith Form B.

The scrutiny of all audit reports filed as per Form B shall be carried out twice a year based on the reports received up to half year ending on June and December of every year and for this purpose, specific timelines are prescribed. One may refer to the above citation for further details.

2. Business responsibility reports

The SEBI has issued Circular No. CIR/CFD/DIL/8/2012 dated 13-08-2012 referring to the MCA guidelines on 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' which contain comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures, demonstrating the steps taken by companies to implement the said principles. In line with these guidelines and considering the larger interest of public disclosure regarding steps taken by listed entities from a Environmental, Social and Governance ("ESG") perspective, it has been decided to mandate inclusion of Business Responsibility Reports ("BR reports") as part of the annual reports for listed entities. Therefore, in line with the objective to enhance the quality of disclosures made by listed entities, certain listing conditions are hereby specified by way of inserting Clause 55 in the equity Listing Agreement as provided in Annexure-1 to the above circular. An Annexure-2 also provides certain key principles to assess the fulfillment of listed entities and a description of the core elements under these principles. The requirement to include BR Reports as part of the annual reports shall be mandatory for top 100 listed entities based on market capitalisation at BSE and NSE as on 31st March, 2012. The BSE and NSE shall independently draw up a list of listed entities to which the circular would be applicable based on the said criteria and disseminate the same on their websites respectively. Other listed entities may voluntarily disclose BR Reports as part of their Annual Reports. One may refer to the above citation for further details.

3. Manner of achieving minimum public shareholding requirements

The SEBI has issued Circular No. CIR/CFD/DIL/11/2012 dated 29-08-2012 pursuant to amendments to Clause 40A of the Listing Agreement. Now, with a view to facilitate listed entities to comply with the minimum public shareholding requirements with-

in the time specified in the Securities Contracts (Regulation) Rules, 1957 ("SCRR, 1957"), the following additional methods shall be available:

- Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their rights entitlement.
- Bonus Issues to public shareholders, with promoters/promoter group shareholders forgoing their bonus entitlement.

Listed entities desirous of achieving the minimum public shareholding requirement through other means, or in seeking any relaxation from the available methods, may approach SEBI with appropriate details. Such requests would be considered by SEBI based on merit. SEBI would endeavour to communicate its decision within 30 days from the date of receipt of such requests. One may refer to the above citation for further details.

4. Know your client requirements for foreign investors

The SEBI has issued Circular No. CIR/MIRSD/11/2012 dated 05-09-2012 in relation to know your client (KYC) norms for the securities market. Based on representations received regarding operational issues in the implementation of SEBI Circulars on KYC issued earlier in case of foreign investors viz. foreign institutional investors, sub-accounts and qualified foreign investors and in consultation with the stock exchanges, depositories and intermediaries, SEBI has now issued certain clarifications which are included in Annexure A to this circular. It is clarified that the intermediaries shall strictly follow the risk based due diligence approach as prescribed by SEBI Master Circular on AML No. CIR/ISD/AML/3/2010 dated 31st December, 2010 and shall conduct ongoing client due diligence based on the risk profile and financial position of the clients as prescribed in the Circular. The requirements of this circular are applicable for both new and existing clients. One may refer to the above citation for further details and the KYC requirements for the foreign investors.

5. Steps to re-energise Mutual Fund (MF) industry

The SEBI has issued Circular No. CIR/IMD/DF/21/2012 dated 13-09-2012 to re-energise the MF industry. This is done so as to increase penetration of mutual fund products and to energise the distribution network while protecting the interest of investors, and for this purpose SEBI held a series of meetings with various stakeholders in the MF industry. Mutual Fund Advisory Committee (MFAC) also deliberated



and offered its recommendations on issues confronted by the industry. Pursuant to SEBI Board's approval to various recommendations, it has been decided to implement and allow MFs to charge Additional TER (Total Expense Ratio) can be charged up to 30 basis points on daily net assets of the scheme, charge service tax on investment and advisory fees to the scheme, to have a single plan structure for mutual fund schemes, to provide separate option for direct investments, ensure harmonising applicability of NAV across schemes, have monthly portfolio disclosures, disclosure with respect to half yearly financial results, etc. One may refer to the above citation for further details.

6. Application supported by blocked amount (ASBA) facility in public/rights issue

The SEBI has issued Circular No. CIR/CFD/DIL/12/2012 dated 13-09-2012 after noticing that some banks while making applications on own account using ASBA facility are doing so without having clear demarcated funds and that some banks are marking lien against credit limits/overdraft facility of their account holders' for ASBA applications. SEBI has now stated that Self Certified Syndicate Banks (SCSBs) are hereby advised to ensure that for applications made by any investor using ASBA facility, the SCSBs shall block the application amount only against/in a funded deposit account and ensure that clear demarcated funds are available for ASBA applications. SEBI has also advised SCSBs to ensure that for making applications on own account using ASBA facility, they should have a separate account in own name with any of the SEBI registered SCSBs. Such account shall be used solely for the purpose of making application in public issues and clear demarcated funds should be available in such account for ASBA applications. One may refer to the above citation for further details. ■