# Direct Taxes and Corporate Law News

## Headlines:

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2. Higher TDS rate if PAN not disclosed
3. Controversy is more prominent in case of Intangible Assets
4. Standards to avoid Corporate Frauds

IFRS Section

5. It’s time to amend required laws for adoption of IFRS

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## 1. TDS may be waived for Rental Income up to Rs 2 Lakh

The Central Board of Direct Taxes (CBDT) is likely to increase the exemption limit for tax deducted at source on rental income to Rs 2,00,000 a year from Rs 1,20,000 at present. The move will go a long way towards reducing the tax burden of individuals and companies earning rental income.

Professionals, small businesses and companies paying rent above Rs 1,20,000 annually are statutorily required to deduct TDS. The TDS rate is 15 per cent for individuals and 20 per cent for companies earning rental income from land, buildings (including factory buildings) and furniture. The rate is 10 per cent on rental income from machinery, plant and equipment. The move to increase the rental income limit has become necessary after the basic exemption limit from income tax for individuals was raised to Rs 1,50,000 a year in Budget 2008.

### 2. Higher TDS rate if PAN not disclosed

Companies and individuals who do not reveal their Permanent Account Number (PAN) while receiving income from any source will be liable to pay tax deducted at source (TDS) at the maximum marginal rate of 30 per cent (plus surcharge and education cess).

Under the Income Tax Act, 1961, any income payable to the assessee is liable for TDS by the person or entity making the payment. TDS rate ranges from 1 per cent to 30 per cent depending on the nature of income.

The Central Board of Direct Taxes is considering changes to the Act to this effect.

*For example, if a payment is made to a professional like an engineer or a doctor, TDS is deducted at a rate of 10 per cent. If the engineer or doctor fails to provide PAN number, tax will be deducted at the rate of 30 per cent. Similarly, if a contractor does not provide PAN, he will suffer a TDS at the higher rate of 30 per cent instead of 2 per cent now.*

*Many assessees do not reveal their PAN to evade taxes and get away with the normal TDS payment. Due to lack of PAN, taxes were often pocketed by deductor also. This creates difficulty in processing tax refunds as well.*

### 3. Controversy is more prominent in case of Intangible Assets

As per Indian Income-tax Act, all incomes accruing or arising, whether directly or indirectly, through the transfer of a capital asset situated in India is liable to Income-tax. Many a times, a controversy arises as to the situs of the asset in India. The controversy is more prominent in case of intangible assets like trademarks, brand-names, etc.

**Relevant Case Study**

*Foster's Australia Ltd (170 Taxman 341)*

The brief facts of the case are that an Australian company is engaged in brewing, processing and selling of beer products. It owns trademarks, logos, technology and know-how, etc. On Oct, 13, 1997, the company entered into a Brand License (BL) Agreement with Foster's India, an Indian company whereby Foster's India was granted an exclusive license to brew, package, label and sell Foster's beer and an exclusive right of use of the trademarks within the territory of India. The Australian company was paying income-tax on such consideration, treating the same as royalty income.

On August, 4, 2006, the Australian company entered into a sale and purchase (S&P) agreement with SAB Miller, UK in Australia for transfer of shares of Foster India and other intangible assets in the nature of intellectual property.

In the instant case, the prime issue for consideration was as to whether the capital assets transferred through the S&P Agreement are ‘situated in India'. This issue arises since the income arising from the transfer of capital asset situated in India is deemed to be an income liable to be taxed in India as per the explicit mandate of section 9(1).

The Australian company approached the Authority for Advance Ruling for a ruling. It contended that the items of intellectual property covered by the S&P Agreement have no location in India and the situs in this case would be the place of fiscal residence of the owner. Therefore, both the asset and the place of contract being outside India, no income can be charged to tax under the Income-tax Act, 1961.

The department argued that Foster's India is held by Foster's Group, Australia, through the cobweb of its subsidiaries. Though the shares and trademarks and Foster's brand are shown to be sold by two different entities, in effect and in substance, Foster's group, Australia has transferred the ownership of its Indian company, i.e., Foster's India including its tangible as well as intangible assets.

The Authority however observed that: "The situs of these intellectual property assets, in our view, should not be traced and confined only to the place where the contract (India S&P Agreement) was entered into and acted upon by the parties. On the relevant date of transfer, they were very much present in India and the transfer of such assets took place concurrent with the transfer of controlling interest in Foster's India to SAB Miller. At best, their location in Australia is only notional or fictional. The fact that the trade-marks and names originated in Australia and initially registered there does not make material difference."

It was therefore held that the income arising to the Australian company from the transfer of its right, title and interest in the trade-marks and Foster's brand Intellectual Property is taxable in India under the Income-tax Act, 1961.

It is thus clear that intangible assets like trademarks, brand-names etc shall be taken as located in India if they are used in India. Their place of registration in this context is not material.

4. **Standards to avoid Corporate Frauds**

With the aim of checking corporate frauds, the ministry of corporate affairs is likely to introduce stricter standards of disclosure and transparency for entrepreneurs seeking incorporation. Proposals in this regard, which are likely to be introduced as part of the new company law, is likely to call upon promoters to be more specific and transparent in disclosing their antecedents.

The ministry wants to introduce a system for companies seeking incorporation to provide full details of its promoters in a way which will amount to a virtual due diligence. A direct beneficiary of such a scheme would be the prospective investors of newly-formed companies who often have almost no knowledge of the competence of promoters

Officials say the law now mandates disclosure of basic details about company promoters, but the proposals are aimed at greater focus on the top brass of the company at the time of its incorporation. The idea is to ensure that elaborate disclosure of the promoters and directors, which would reduce the possibility of fly-by-night operators disappearing with public money.

However, the processes of incorporation as well as filing of statutory documents have already been made simple through the government's e-governance project called MCA-21. The broad philosophy of the new company law is to ensure more transparency and disclosures, while allowing companies more flexibility in decision making, by taking their shareholders into confidence.

Shareholders would increasingly be responsible about the functioning of the company instead of government approvals at every stage, which has been seen as unnecessary interference by the state in a free-market economy.

**IFRS Section**

5. **It's time to amend required laws for adoption of IFRS**

Government needs to take an immediate call on amending the required laws for adoption of international accounting system, IFRS, with just three years left for its full fledged convergence with the global norms.

Though the Institute of Chartered Accountants (ICAI) has set the ball rolling, government has to take a serious note of the matter. The time left is too little and Income Tax Act, Companies Act among others is to be amended. Going by our Parliamentary process, it will take a lot of time and our IFRS adoption deadline is 2011.

Pointing out that the most essential change required is in the Companies Act by converging Indian accounting practices with the International Financial Reporting System (IFRS), global confidence in Indian companies would be boosted as it would provide actual position of companies to overseas investors.

Since the IFRS is based on the fair- value concept, legislations like Income Tax Act which takes into account historical cost also need to be amended so that Corporates can expedite their process of adopting IFRS by 2011, the deadline set by the ICAI for its full adoption.

**Thank You**

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