31st October, 2008 | Issue No 19 | Weekly News Letter

Income Tax and Company Law Weekly Updates

THE FEDERATION OF ANDHRA PRADESH CHAMBERS OF COMMERCE AND INDUSTRY, Hyderabad

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Tax and Law E-mail updates for free: http://groups.google.com/group/directtaxes-companylaw-committee

We wish to inform you that the Pre-Budget Memorandum – 2009 is to be submitted to the Government in the month of November, 2008. We request you to kindly give your valuable suggestions to be included in the Pre-Budget Memorandum – 2009.

We shall be highly obliged if you can kindly forward your valuable suggestions to purna@fapcci.in on or before 10th November, 2008.

Case Laws

Capital Gains Special

1. Would exemption of capital gains under section 54F be available if there has been a mere extension of an existing building?
2. In a case where additional compensation awarded by the civil court had not been accepted by the State Government and it had preferred an appeal objecting to the enhancement, can they said additional compensation received by the assessee be subject to capital gains tax?
3. Where a holding company receives assets on voluntary liquidation of its subsidiary company by virtue of being a shareholder of the subsidiary company, would the value of assets received by the holding company on the date of distribution be liable to tax under section 46(2)?

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Upcoming Events

November / December

Certification Course on "***Income Tax***" and "***Company Law"*** for Students and Professionals

One Day seminar on ***"International Financial Reporting Standards (IFRS)"***

One Day seminar on "***New Companies Bill, 2008 and Limited Liability Partnership Bill, 2008"***

Meeting for ***Pre-Budget Memorandum - 2009***

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SEBI amends Clause 49

SEBI has made amendments to Clause 49 of the listing agreement that deals with corporate governance norms. The amendments have been made after representations from entities requested Sebi to bring about further clarity on the amendment (made on April 8) where the promoter of a listed company is a listed or an unlisted entity. A Sebi release said, “If the promoter is a listed entity, its directors —other than the independent directors, its employees, or its nominees — shall be deemed to be related to it.” But, “if the promoter is an unlisted entity, its directors, employees or nominees shall be deemed to be related to it.”

Companies Bill introduced, to make ‘doing business’ easier

The much-awaited Companies Bill, 2008, was introduced in the Lok Sabha on Thursday. The Bill, once passed, would create an entirely new working environment for companies and will ensure lesser state controls, making it easier for them to incorporate and wind up businesses. The Bill seeks to replace the Companies Act, 1956.

The Bill is likely to be referred to the standing committee of Parliament for further deliberation. Now in public domain for discussion, the Bill has also been put up on the ministry of corporate affairs’ website.

Minister of corporate affairs Prem Chand Gupta, who presented the Bill in the Lower House amid objections raised by CPI (M) member Varkala Radhakrishnan, said, “I can assure once the Bill is passed and enacted, no changes would be required to be made for the next 20 years. It will give a relief to regulators like the Securities and Exchange Board of India (Sebi) as it provides simple framework and is easy to implement.”

The standing committee would examine the new Bill and invite opinions from the industry experts as well as the public. There are 400 provisions in the new Bill as compared to 650 in the Companies Act, 1956.

Rajiv Memani, CEO and country managing partner Ernst & Young said, “The Bill has proposed some far-reaching changes in the statutory framework. It is expected to address the business and investor community’s desire for a more contemporary and effective regulatory environment. The Bill, primarily, seeks to reduce government control over corporate processes, impart greater transparency, focus on corporate governance, stricter compliance requirements and ensure greater accountability to stakeholders.”

The Companies Bill intends to modernize the structure for corporate regulation in India and represents a major reform statement by the government to promote the development of the Indian corporate sector through enlightened regulation. It seeks to enable the corporate sector to operate in a regulatory environment of best international practices that foster entrepreneurship, investment and growth.

The Bill reinforces shareholders democracy, facilitates e-governance in company processes, recognizes the liability of boards, directors and senior management personnel of companies, provides for a new scheme for penalties and punishment for non-compliance or violation of the law, harmonizes corporate regulation with action by sectoral regulators, incorporates a new framework for mergers and amalgamations of companies.

Rajya Sabha clears Limited Liability Partnership Bill

The Limited Liability Partnership Bill, 2008, was cleared by the Rajya Sabha on Friday. The Bill is likely to face scrutiny by the Lok Sabha when Parliament reconvenes on December 10. The proposed law seeks to promote setting up of multidisciplinary firms in the country. Limited liability partnerships as proposed in the Bill is a new corporate form that promotes entrepreneurial initiatives of professionals like chartered accountants and lawyers and will also be helpful for professionals in the service and technology-based enterprises.

ICAI issues two accounting norms

The Institute of Chartered Accountants of India (ICAI) has issued the first two accounting standards for local bodies, accounting standard for local bodies (ASLB) 3— Revenue from Exchange Transactions, and Accounting Standard for Local Bodies (ASLB) 4—Borrowing Costs.

Revenue from Exchange Transactions lays down the accounting treatment for revenue arising from exchange transactions and events, in addition to specifying revenue recognition norms.

The local bodies like municipalities, panchayats and Delhi Jal Board will be able to use this standard for revenue arising from the rendering of services, sale of goods, and other income like royalty, dividend and interest. It deals with how the revenues of a local body would be accounted when there is some value received in exchange. The new standard would help recognise the revenue, measurement criteria and how it should be presented in the financial statements.

Borrowing Costs prescribes capitalisation of borrowing costs that are incurred for acquisition, construction or production of a qualifying asset. As per this standard, any borrowing cost, such as interest or commitment charges related to rising of funds, will be added to the cost of asset.

Accounting Standards for Local bodies chairman Jayant Gokhale told FE, “This is the beginning of a series of standards that would improve the transparency and accountability of local bodies to public.”

The accounting standards for local bodies will help harmonise the financial reporting practices followed by various local bodies that have adopted accrual basis of accounting. These standards are important, keeping in view the recent accounting reforms to bring more transparency and accountability in managing public funds.

Currently, there are no accounting standards for local bodies in India. The ICAI had already issued the Preface to the Accounting Standards for Local Bodies in 2007. Further, accounting standard for local bodies (ASLB) 1—Presentation of Financial Statements, and accounting standard for local bodies (ASLB) 2—Accounting Policies, Changes in Accounting Estimates and Errors—will be issued shortly

Adopt an animal, get I-T relaxation

Adopt an animal by paying for its upkeep at the Nandankanan Zoological park and get relaxation in income tax here.

"The adopters will get the benefit under Section 80g of the Indian Income Tax Act," zoo director Ajit Patnaik told reporters on Friday at the launch of the programme to boost the park's conservation programme.

Though five other zoos across the country have launched an adoption programme, Nandankanan alone has the provision of granting relaxation in income tax, he said.

Besides individuals, the 'adopt-an-animal' programme was open to corporate bodies, clubs, NGOs and academic institutions, he said.

The programme was aimed at improving quality, nutritious food and upgrading enclosures at the zoo, he said.

It would also raise the awareness and commitment of people to respect value and conserve flora and fauna.

Patnaik claimed that the programme would harness public support and help in garnering affirmative action, especially for endangered species.

Nandankanan was undertaking several conservation breeding programmes for endangered species which needed support from the people, the director added.

On the first day, four persons came forward to adopt animals, Patnaik said.

No tax relief likely for Market-to-Market loss

IT is turning out to be a double whammy of sorts for companies that have taken a hit on account of mark-to-market (MTM) losses due to their exposure to forex derivatives. These companies may find it difficult to convince the income tax (I-T) department to allow MTM losses as deduction.

Sources in the I-T department pointed out that there are no specific provisions in the Income Tax Act dealing with this issue. Moreover, there are no precedents or case laws that clearly define the treatment of losses incurred by companies.

As a result, these companies might not be allowed to set off such losses against profits to reduce their tax liability. “Judicial opinion is divided on the MTM issue. However, logically it should be allowed as a normal business loss,” PricewaterhouseCoopers (PwC) executive director Ketan Dalal said.

I-T sources, however, have a different view. “There are no specific provisions under the Income Tax Act, 1961, or direct judicial precedents, dealing with the treatment of losses or gains resulting from derivative contracts. Hence, this issue would need to be examined on the basis of general principles relating to deductibility of losses or taxability of gains. “

“As a general rule, items, which are ‘revenue’ in nature, are taxable or deductible, and items, which are ‘capital’ in nature, are not taxable or deductible,” the source added.

However, there is a view that a case-to-case basis approach may be adopted in such cases. Deduction against such losses, which are notional, can be allowed only in the year in which actual liability to pay arises, sources said.

A large number of firms, even small- and mid-sized, had taken exposure to derivatives following large-scale volality in the Indian currency. Many of these companies have to shown MTM losses on their books due to the new accounting guidelines issued by the Institute of Chartered Accountants of India.

"I-T law makes a distinction between an actual liability which a company faces at present and a potential liability in the future, which for the time being is only contingent. Contingent liabilities do not constitute expenditure and cannot be subject matter of deduction. Deduction can be allowed only in the year in which the liability to pay accrues, and it accrues only when the liability crystallises or becomes ascertained," the source said.

Land mark Case Laws – Capital Gains Special

1. ***Where a holding company receives assets on voluntary liquidation of its subsidiary company by virtue of being a shareholder of the subsidiary company, would the value of assets received by the holding company on the date of distribution be liable to tax under section 46(2)?***

CIT v. Brahmi Investments (P.) Ltd.

Relevant sections: 46(2) & 47(v)

In this case, the High Court held that if a holding company had received assets on voluntary liquidation of its subsidiary company by virtue of being a shareholder of the subsidiary company, the value of assets received by the holding company on the date of distribution was liable to tax under section 46(2). Section 47(v), which provides that transfer of a capital asset by a subsidiary company to its 100% holding company (being an Indian company) would not be regarded as a transfer for the purpose of charge of capital gains tax, would not be applicable in this case.

2. ***In a case where additional compensation awarded by the civil court had not been accepted by the State Government and it had preferred an appeal objecting to the enhancement, can they said additional compensation received by the assessee be subject to capital gains tax?***

CWT v. T.Girijammal

In this case, it was held that when additional compensation awarded by the civil court had not been accepted by the State Government and it had preferred an appeal objecting to the enhancement, the said additional compensation received could not be treated as part of the compensation received for the transfer of the land until it is finally determined by the High Court or the Supreme Court. If the appeal of the State is allowed, the assessee is bound to refund the amount and hence, the same cannot be assessed in the assessee's hands before reaching finality. Hence, when the income itself has not accrued or arisen, the question of levying wealth-tax also does not arise, as it is only consequential in nature.

3. ***Would exemption of capital gains under section 54F be available if there has been a mere extension of an existing building?***

CIT, Tamil Nadu-I vs. V. Pradeep Kumar

Relevant section: 54F

For the purpose of exemption of capital gains under section 54F, there must be construction of a residential house and such construction should be real and not symbolic. Exemption would not be available if there has been a mere extension of an existing building. Mere construction by way of extension of the old existing house would not mean constructing a residential house as contemplated under section 54F.

Important Changes in ROC annual filing

As you all are aware that Annual Filing Forms to be filed with the ROC i.e. FORM-23AC, FORM-23ACA, and FORM-20B have been revised w.e.f. 28.09.2008, and version of some other Forms i.e. FORM-66, DIN-3, FORM-1, FORM-18, FORM-32, and FORM-1A have been changed w.e.f. same date.

There are some important points to be noted here before filing of Annual Return and Balance sheet of the company for your convenience and avoidance of additional charges:

1. Every Auditor/ Auditor Firm of the company is requiring giving intimation of his/ its appointment/ re-appointment to the ROC by filing FORM-23B ON-LINE. (No ROC fee applies) before filing of BALANCE SHEET. It is important to be noted here that FORM-23B has to be digitally signed by AUDITOR only. All Auditor/ Auditor Firms are now requiring having Digital Signatures for filing of FORM-23B.
2. Secondly, Auditor is require to receive an intimation of his appointment from all the company concerned in which he has been appointed or re-appointed as an Auditor, which shall be attached with FORM-23B to be filed with the ROC by auditor. (A Draft letter enclosed herewith).
3. SRN (Service Request Number) of Form-23B filed with the ROC is MUST to be mentioned in FORM-23AC for filing BALANCE SHEET.

1. Some of the new changes have been made in FORM-23AC for Filing of Balance Sheet, i.e. SRN (Service Request Number) of FORM-66 (In those cases where Compliance Certificate is required to be filed) is required to be mentioned in FORM-23AC.
2. DIN No. of Directors is required to be mentioned in FORM-23AC, who has signed the BALANCE SHEET/ DIRECTOR REPORT.
3. SRN (Service Request Number) of Form-23B filed with the ROC is MUST to be mentioned in FORM-23AC for filing BALANCE SHEET.
4. FORM-23AC is required to be Certified (Digitally Signed) by Practicing CS/CA along with Director of the company.

1. FORM-23ACA is required to be Certified (Digitally Signed) by Practicing CS/CA along with Director of the company.

1. DIN No. of all Directors who are directors as on Date of AGM is required to be mentioned in FORM-20B.
2. Detail of all Directors who ceased to be directors since the date of LAST AGM is required to be mentioned in FORM-20B.
3. In case of Listed company Name and C.P. No. of Practicing C.S.
4. FORM-20B is required to be Certified (Digitally Signed) by Practicing CS/CA along with Director of the company.

Source: ***Internet, e-mails, News Papers and CA Final Syllabus***

Any suggestions to improve my service to members, please feel free to send

Thank you

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