E-NEWSLETTER June, 2013

CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

"IF YOU ARE NOT WILLING TO LEARN, NO ONE CAN HELP YOU;
IF YOUR ARE DETERMINED TO LEARN, NO ONE CAN STOP YOU."

⇒ INSIDE

Articles / other materials and suggestions are invited from the Members for publication in forthcoming Issues. All articles submitted will be subjected to review and published only after accepted for publication.

Kindly send the articles and other relevant material for publication along with your photograph at ankursrivastavacs5985@gmail.com. We assure that we empower you with the knowledge you seek.

============================ FROM THE EDITOR ============================

CS Ankur Srivastava
Editor

Dear Professional Colleagues & Friends,

We have seen volatility in the market and declining value of Rupee. As we are aware that the Financial Market needs to be regulated strictly, streamlining the issue procedures and enhanced safety mechanisms. When we talk about financial market, the sectors that top the list are Banking and Insurance Sectors. Capital market comes at last with less retail participation.

The investing behaviour, to a large extent, is influenced by risk perception of investors and that explains why the major savings in our country get channelized to Real Estate and Gold. This has led Indian Financial Market to depend upon FIIs for funding which result in lack of wealth creation in the socio-economic pyramid.

An analysis of the performance of IPOs' post listing in the last three years shows that $2/3^{rd}$ of the public issues were trading below their listing price.

To streamline the same, Government Bodies, Corporates and the Professionals need to be more disciplined and follow good Corporate Governance Practice. Market regulator SEBI has *inter-alia* introduced Electronic Initial Public Offer (E-IPO) and SEBI Complaint Redressal System (SCORES) to promote retail investments. More significantly, Companies Bill, 2012 which is likely to takeover Companies Act, 1956 very soon, based on the very concepts of Corporate Governance, Corporate Social Responsibility and Investor Protection.

We the Corporate Professionals need to be more proactive and act as a mediator between the Investor and the Government who is acting on behalf of the Corporate so that the rights of any of them are not infringed and the Corporate would get due benefits in compliance with the schemes initiated by the Government. We should take advantage of the schemes initiated by the Government to benefit the Corporates and Investors such as Green Initiative of Ministry of Corporate Affairs which benefitted the Corporates by way of cost cutting and Investors as well by way of smooth communication and easy access of information relating to the Company which was major grey area since a long time.

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To conclude, I must say that the role and responsibility of a Professional is not limited to the areas specified by the management as per their HR policy, but it is much wider, the matter is to identify, realize and recognize the same.

From this issue we have also initiated to guide the investors regarding Forex Hedging, and incorporated the views on USD/INR of CMA D. S. Kapoor a reputed Practicing Cost Accountant working in the relevant area since long back.

All the Best and keep contributing towards the betterment of our profession.

Happy Reading.

CS Ankur Srivastava
Editor

================================ ARTICLE ================================

FUNDAMENTALS OF SERVICE TAX

CS Shweta Sharma

PREFACE

Service Tax is one area which has seen tremendous changes in the last decade or so since its introduction in the year 1994. The Government therefore has seen this area as one which can be used to boost revenues in order to meet its expenditure targets. One aspect which merits attention is that despite the contribution of the service sector to our economy in terms of exports, this is one area which has also seen substantial litigation.

The assesses problems are compounded because there are very few professionals in the finance field who have sound knowledge of service tax. This would often result in the assesses either facing an exposure at some point of time or losing out on certain legitimate benefits that they entitled to in complying with the law.

SERVICE TAX - AN OVERVIEW

Tax on services has been in vogue in India since 1994 when it was introduced for the first time. When it was introduced initially there were three services which were liable but over the years various other services have been added and today more than a hundred services are liable under service tax. Here, a negative list would make more sense to avoid uncertainty caused by frequent changes.

Service sector is now occupying the center stage in the economy so much so that, in the contemporary world, development of service sector has become synonymous with the advancement of the economy. Service Sector has been growing phenomenally all over the world, though it may vary in degree and magnitude among various countries. The growing importance of this sector can be gauged from the ever-increasing contribution made by the Service Sector to GDP and thereby pushing back the contribution of traditional contributors like agriculture and manufacturing sectors.

MEANING OF THE TERM SERVICE

Service Tax is an indirect tax levied on certain services provided by certain categories of persons/ firms/ agencies. Service sector was not taxed for considerably very long time. For the first time, the services came to be taxed in 1994 Budget through Chapter V of the Finance Act, 1994. However w.e.f. 01.07.2012 service tax is applicable on all services except those either mentioned in Negative List or in Exemption Notifications.

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Service has been defined in the clause (44) of new section 65(B) of the Act and it means any activity for consideration carried out by a person for another person and includes a declared service. However it does not include:

(a) Any activity that constitutes only a transfer in title of goods or immovable property by way of gift, sale or in any other manner;
(b) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or
(c) A transaction only in money or actionable claim;
(d) Any service provided by an employee to an employer in the course of the employment;
(e) Fees payable to a court or a tribunal set up under the Law for the time being in force.

Blacks Law Dictionary defines the term service to mean an intangible commodity in the form of human effort such as use of labour, skill or knowledge for the benefit of another.

RELEVANCE OF THE CONCEPT OF TAXABLE SERVICE

The concept of taxable service can be appreciated by going through section 65(105) which consist of various sub-clauses with each sub-clause seeking to define taxable service in relation to a particular service category.

Though the service tax levy is attracted at the time of provision of taxable services the payment of the same can be made at the time of receipt of the consideration. But where any amount is received as an advance towards the taxable service to be provided in future, the service provider would be liable to pay service tax on the same. In case the service is not provided at all, the service tax paid in advance would be allowed to be adjusted in the subsequent period or would be refunded.

As per the second proviso to Rule 6(1) of Service Tax Rules 1994, no matter when the payment is received towards the value of services, no service tax shall be payable for the part or whole of the value of services attributable to services provided during the period when such services were not taxable.

The concept of taxable service is also critical as the CENVAT credit availment would be on excise duty incurred on inputs and capital goods and service tax paid on input services used for providing such service. Even where the export benefits are to be examined in respect of the services exported, the services exported should be taxable services.

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RELEVANCE OF THE CONCEPT OF SERVICE PROVIDER

In addition to the concept of taxable service, one should also be familiar with the concept of service provider. Under service tax there is no uniform definition of the term service provider and it varies from one service to another. The concept of service provider has been defined keeping in mind the category of service that is sought to be taxed. For instance, in case of advertising services, the service provider should be an advertising agency. Similarly, in case of services of a technical nature, the service provider would have to be an agency or an engineer depending on the exact nature of the activity that is sought to be taxed.

Normally the service provider who provides taxable services is liable to pay service tax. However, in certain circumstances he could even be liable as a service receiver. These circumstances would be governed by section 68(2). Here, the concept of service provider would not be relevant to attract liability.

Therefore in order to tax a particular service, it should find to mention in which of the sub clauses of section 65(105) as a taxable service plus the person providing the stated service should be covered as a service provider by the relevant definition. Where the service is not covered as a taxable service or where the person providing the service cannot be regarded as a service provider under the relevant definition, the person providing the service would not be liable to service tax.

Very often the confusion regarding the taxability is on account of differences in interpretation of the definitions concerned which can be resolved to a certain extent by strictly going as per the facts and circumstances of each case and by studying proper commercial / business practices.

REGISTRATION

Every person liable to pay service tax is required to register himself by making an application to SCE as per section 69. The service provider before registering himself shall ensure that he has crossed the exemption limit of registration for the small service provider which is ` 10 lakhs, specified by notification 6/2005 ST dated 01.03.05 as amended from time to time. Branded service providers i.e providing services under brand name or trade name of others, would not be admissible for the exemption.

An illustration could be the commercial coaching franchisees. The exemption from registration would not be available for a person who is liable to pay service tax as receiver of services. Moreover, the aggregate value of taxable services provided in the preceding financial year should not exceed ` 10 lakhs in order to avail the benefit of this exemption.

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LEVY WHETHER CONSTITUTIONALY VALID

The levy of service tax was initially under the residuary powers conferred to the Union by entry 94 of List I to the Seventh Schedule to the Constitution of India. Later entry 92C was introduced specifically to cover Taxes on Services.

In a number of cases the constitutional validity of service tax has been questioned and the decisions of the High Courts/ Supreme Court have been in favour of the revenue.

A) In Tamil Nadu Kalyana Mandapam Assn Vs UOI ((2004) (167) ELT 3) S C,, the levy of service tax on mandap keepers and outdoor caterers was upheld by the Supreme Court as a tax on services and not a tax on sale of goods or hire purchase activities.

B) The levy of service tax on professional services of Chartered Accountant, Cost Accountant and Architect was also upheld by the Supreme Court in **All India Federation of Tax Practitioners Vs UOI (2007 (07) STR 625-SC)**

One thing which is yet to be resolved is the validity of service tax levy on rental of immovable property though the Delhi High Court has admitted a writ petition in Home Solution Retail India Ltd Vs UOI (2009-TIOL-196-DEL-HC-ST) challenging the levy of service tax on pure renting of immovable property without there being a service associated with the renting of immovable property.

CONCLUSION

Service tax is rightly referred to as Tax of the future. Well synchronized taxation on manufacturing, trade and service without giving rise to cascading effect of taxation would be an ideal worth pursuing in the immediate future. This would bring in VAT in its truest sense. Continued growth in GDP accompanied by higher rate of growth in service sector promises new and wider avenues of taxation to the Government. If the tax on services reduces the degree of intensity of taxation on manufacturing and trade without forcing the Government to compromise on the revenue needs, then one of the basic objectives of taxing the service sector would be achieved.

Voluntary tax compliance on the part of taxpayers demands prudent accounting practices and transparency in the conduct of their business. Marginal rates of taxation would be conducive in this process. Many new services may be brought under the tax net in future. The inclusion of all value added services in the tax net would yield larger amount of revenue and make the existing tax structure more elastic.

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Advanced economies of Western Europe, North America and Far East have share of service sector in their GDP ranging from 60% to 80%. The growth in absolute quantum of GDP and proportion of Service-sector in GDP holds promise for larger revenue generation without increasing the existing level of taxation.

Regards,

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Just Dial ~ Soaring IPO

INTRODUCTION

CMA Shriram Varadan

2013 Indian Capital Markets saw one of richest IPO offer for sale from Service Industry

JUST DIAL!!!

Recently the Indian capital Market saw an oversubscription of almost nearly 2 times on this ritzy issue which was earlier pampered by overvaluation sentiments with bids for over 2.63 crores shares as against 1.35 crores on offer for sale.

Thanks to QIB's who had ensured their support by subscribing 89% against their minimum allotted portion of 50%, and the non institutional investors saw 1% of the total.

Retail investors who have been allowed a discount of 10% on floor price have made 70% subscription.

The local Search engine's IPO is the much hyped, swanky and one of the richest in Capital market history considering the volume (Issue size) & rate (Price band). The Earnings of company during the FY 2013 is Rs.62 crores, and the company capitalizes itself at Rs.3700 crores which is even almost double than that of the globally acknowledged search engine "Google"

Incorporated in India on 1993, Just Dial provides information & communication services on various business, products & services across India through texts & telephone services thereby meeting the requirements of diverse customer needs. The revenue is yielded mainly from SME's. Since its incorporation, the company had recently transformed itself from telephonic search to Internet based Service.

The issue is placed with a price band of Rs.470/- to Rs.543/- where the issue size is being Rs.833-950 crores. The management has made it clear that the proceeds of IPO are not intended to raise capital for business investment.

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Though the company is not levered (i.e. Company's balance sheet with no debt) which have forced the company to forecast itself or projects its image much wider monetarily, suitably the draft red herring prospectus have been compiled using 'forward looking statements' so as to give consideration to due factors like reliance, materiality, uncertainty & risk factors. This might have wooed many investors to take a gamble on this IPO, apart from which the Company in the recent past had ventured itself into various horizons by exploring diverse areas of operation which fetched more business opportunities & generated sufficient incomes. For instance its total income had increased from Rs.502.4 million in 2007 to Rs.1899.10 million in 2011 & in the same period its campaigns have increased from 40500 to 120200.

To enhance its corporate brand and establish new place of business this issue had been initiated and already the company is now involved in the process of demerging its activities and operations related to IT testing. This will be initiated once on receiving the approval from the court, subsequent to which it will transfer its assets & liabilities to JD Global where it holds preference shares worth Rs.724.7 million.

But the company is facing a hazard as it had pending litigations on various compliance areas like ESIC & FEMA acts.

The company had issued a cautious statement as preconceived notion in the red herring prospectus:

- May not be successful in implementing our growth strategies
- Too much dependency on certain markets for incomes
- Difficulties in protecting domain names & trade names
- Wage pressures might have competitive advantage in pulling down the profit
- The company had sustained operational losses in the past and may experience earning declines in the
- Lack of Insurance coverage to satisfy claim against the company
- Above all, the company doesn't own any premises nor the company registered office is its own

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When most of the experts & traders call this issue will not be viable for investors considering the financial propositions and overvaluation of its business despite marginal increase in income earning capacity and the competitive pressure from the market comparables, the issue was oversubscribed and made the contention of investors credible. Now its upto the price fixation through book building process at which it is propose to get listed and the investor's sentiment around the stock in the future years, despite the company though closely held had a dividend paying history for only one year for Rs.2.22 million in 2009 since its incorporation at 1993.

To conclude, on analyzing the financials and the business prospects of the company this stock will be chosen as a short term buy amongst the investors and would expect to list in the price range of Rs.485-510/- which might even have the impact of trading below the listing price in the near future.

Thanks and Regards:

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============================== ARTICLE ===============================

BRIEF WRITEUP ON SECTION 262

APPOINTMENT OF DIRECTOR TO FILL THE CASUAL VACANCY

In case of Public Company or a Private Company which is a subsidiary of a Public Company, the Board of Directors are empowered by to fill the casual vacancy in the office of any director. In case of any casual vacancy in the office of the Director appointed by the Company in General Meeting is vacated before his term of office will expire in normal course, the resulting casual vacancy may, subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board.

The person appointed to fill the casual vacancy of the Board shall hold office only upto the date upto which the director in whose place he is appointed would have held office if it had not been vacated.

Explanations:

1. Applies in case of public company only;
2. Vacancy must be Casual;
3. Casual vacancy is in the office of the Director appointed by the Company in General Meeting and not any other director;
4. Appointment in casual vacancy is subject to the regulations in the Articles;
5. The vacancy may be filled in duly executed board meeting and not by way of circulation.
6. The person appointed to fill the casual vacancy will hold the office of director to complete the term of original director and is not required to be regularized as Additional Director.

However, there is no requirement to fill the casual vacancy, it is on the discretion of the Board to appoint a director to fill the casual vacancy or not and to appoint a director as a Director appointed to fill the casual vacancy under section 262 or otherwise. However, if due to casual vacancy, the number of directors falls below the numbers of directors required under Companies Act, 1956 or Listing Agreement. The Company should immediately appoint a director to complete the constitution of the Board.

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LEGALITY OF THE DIRECTOR APPOINTED UNDER SECTION 262 :

The appointment of director may be done in General meeting under Section 257 and if desired, the Board of Director are also authorize to appoint Directors under Section 260, 262 and 313.

All of above directors appointed under various sections are having the same powers, rights and liabilities, however, their tenure may vary according to their terms of appointment provided under the respective section.

Under Section 262, Director appointed to fill the casual vacancy is also the Director of the Company having same rights, liability, obligations and duties as was shouldered by the original Director.

The definition of the term Director under Section 2(13) also clarifies the same. The definition of the term director is as under:

"Director includes any person occupying the position of director, by whatever name called."

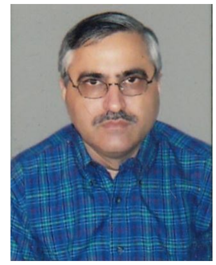
It is an inclusive definition and well includes the director appointed to fill the casual vacancy.

Thanks & Regards:
CS Ankur Srivastava
E-mail: ankursrivastavacs5985@gmail.com

Hello Dear Friends,

Greetings of the Day..!

It is my pleasure to share with you all, my weekly USD/INR hedging guide aimed at providing guidance to Importers and Exporters to hedge their forex exposure.



CMA D.S. Kapoor

USD / INR

Weekly Chart

Last week, it opened at 55.75, high / low at 56.76 / 55.52, and closed at 56.57 as against earlier week's closing at 55.81.

Last week, it was opined that once Rupee surpasses the earlier week’s high of 56.01, it can move towards 56.30; and in case Rupee closes below 55.55, there should be possibilities of profit booking and Rupee may then start strengthening with the likely first target of 55.10, where it may get support. Rupee did not close below 55.55, rather surpassed 56.01 on Tuesday itself and then weakened up to 56.76, 46 paisa more than as expected by us and then finally closed at 56.57. Now, the Currency has surpassed all its earlier tops, except which was created in June 2012 (57.3250).

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========================== FOREX HEDGING GUIDE==========================

The main reasons behind the rupee weakening during last three weeks (before last week) had been weakening of Euro, Yen and GBP (having a total weightage of 83.1% in Dollar Index) against USD, However, in spite of some strengthening in Euro, GBP & JPY against USD, Rupee once again weakened by 76 paisa during the last week. The main reason this time has been month-end buying from Oil Marketing Companies.

Presently, the Currency is moving above all its important moving averages: 3QMA (55.28) / 5WMA (55.17) / 3MMA (54.84) / 50DMA (54.63) / 50WMA (54.58) / 5MMA (54.43) / 200DMA (54.33) and these should act as major supports in case of correction.

This week, we expect that Rupee should consolidate around current levels / within 57.05 – 56.35. Once this consolidation is over and if Rupee closes below 56.35, it may start strengthening. The broad range expected for the week may be within 57.05 – 55.75.

Importers are advised to wait for correction and currency to reach around 55.00 for taking hedging decision.

Exporters are advised to continue covering receivables around current levels in staggered way. For reference purposes, the target rates for Sept end receivables should now be in between 57.00 to 58.00.

Major Resistances : 56.75 / 57.05 / 57.30
Major Supports : 56.25 / 55.80 / 55.20

Regards,

D. S. Kapoor
Cost Accountant
Mobile: 9628411116

Ministry of Corporate Affairs
Government of India

APPLICABILITY OF REGULATION 17(6) IN PROCESSING THE WORK ITEM.

To extend the time limit of the work item to be processed by the concerned ROC beyond the prescribed time limit, Ministry of Corporate Affairs has issued a Circular no. 10/2013 dated 08/05/2013 and clarified that an ad-hoc work item may be created under Regulation 17(6) of the Companies Regulations, 1956.

The concerned ROC will record the specific reasons for creating ad-hoc work item. The details of ad-hoc items created along with specific reasons thereof shall be intimated to the concerned Regional Director every fortnight in the prescribed format. The Regional Director shall send a consolidated report by email to the E-Gov division of the Ministry within a week along with his observation.

The said changes shall come into effect from the date of this circular.

POWER OF ROC TO OBTAIN DECLARATION/ AFFIDAVITS FROM SUBSCRIBERS / FIRST DIRECTORS AT THE TIME OF INCORPORATION.

Recently the matters arises where the Companies have raised monies from the investors in a manner which is opaque / convoluted / Non –accountable and which did not protect the interest of investor which was seriously taken up by the Ministry.

Accordingly, Ministry of Corporate Affairs, with the view to protect the interest of investor inter-alia deposit holder, has issued a Circular no. 11/2013 dated 29.05.2013 and clarified that the Registrar of Companies may obtain declaration / affidavit from subscribers / first directors first at the time of incorporation and subsequently from directors whenever company change its objects to the effect that the Company / directors shall not accept any deposit unless compliance of the applicable provisions of the Companies Act, 1956, RBI Act, 1934 and SEBI Act, 1992 and rules / regulations/ directions made there under are duly complied and filed with the concerned authorities.

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Ministry of Corporate Affairs
Government of India

CONVERSION OF FIRMS INTO A LIMITED LIABILITY PARTNERSHIP-CLARIFICATION OF MINISTRY

Ministry of Corporate Affairs has examined the following issues raised by the stakeholders:

1. Conversion of multiple partnership firms (including audit firms) into a single LLP;

2. Manner in which appointee company shall take note of the change in the status of the auditor once the relevant CA Audit firm has got itself converted into a CA audit LLP as per the relevant provisions of the LLP Act, 2008.

Ministry has in consultation with the Expert Committee on LLP Issues has issued following clarification to guide the stakeholders:

1. The Provisions of sections 55 and 56 of the LLP Act, 2008 read with Second Schedule thereto, *inter-alia,* provide for requirements in respect of conversion of a single partnership firm into a single LLP. The LLP Act, 2008 does not provide for conversion of two or more firms into a single LLP.

2. The provisions of section 58(4)(b) of the LLP Act, 2008 provide that on conversion of a firm into a LLP, as per the provisions of the said Act, all property, assets, interests, rights, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the LLP without further assurance, act or deed. Accordingly, if a CA Audit Firm, being an Auditor in a Company under the Companies Act, 1956 gets converted into a LLP after complying with the relevant provisions of the LLP Act, 2008, then, such a LLP in accordance with the provisions of section 58(4)(b) of the LLP Act, 2008 would be deemed to the Auditor of the said Company. The relevant appointee Company may take note of such change in status of the Auditors through a resolution of the Board.

================================= **UPDATES** =================================

Ministry of Corporate Affairs
Government of India

CIRCULARS/ NOTIFICATIONS ISSUED DURING THE MONTH OF MAY, 2013

Ref No.	Date	Description
General Circular No. 11/2013	29.05.2013	Power of ROCs to obtain declaration/ affidavits from subscribers/first directors at the time of incorporation.
General Circular No. 10/2013	10.05.2013	Applicability of Regulation 17(6) in processing the work items.

SEBI CIRCULAR NO. CIR/CFD/DIL/7/2013 DATED MAY 13, 2013 –

AMENDMENTS TO SEBI (EMPLOYEE STOCK OPTION SCHEME AND EMPLOYEE STOCK PURCHASE SCHEME) GUIDELINES, 1999 AND EQUITY LISTING AGREEMENT- CLARIFICATION

SEBI vide Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 made amendments to Equity Listing Agreement and SEBI (Employee Stock Option Schemes and Employee Stock Purchase Schemes) Guidelines, 1999 ("SEBI (ESOS and ESPS) Guidelines, 1999"). The amendment to Equity Listing Agreement through insertion of Clause 35C mandated that all the employee benefit schemes involving the securities of the company shall be in compliance with SEBI (ESOS and ESPS) Guidelines, 1999 and any other guidelines, regulations etc. framed by SEBI in this regard. The said clause also required that all the employee benefit schemes already framed and implemented by the company involving dealing in the securities of the company, before the insertion of this clause shall be aligned with and made to conform to SEBI (ESOS and ESPS) Guidelines, 1999 by June 30, 2013.

The amendment to SEBI (ESOS and ESPS) Guidelines 1999 also provided that no ESOS/ESPS schemes shall involve acquisition of securities of the company from the secondary market.

SEBI is in receipt of various representations seeking clarification on the applicability of the circular as well as on the continued holding of securities already acquired by employee benefit trusts before the date of the circular, beyond June 30, 2013, i.e. the last date by which listed companies are required to align their employee benefit schemes involving securities of the company with SEBI (ESOS and ESPS) Guidelines 1999.

Accordingly, SEBI has further issued a Circular no. CIR/CFD/DIL/7/2013 dated 13/05/2013 and has provided clarifications on the said topics and also partially ameneded the SEBI Circular no. CIR/CFD/DIL/3/2013 dated January 17, 2013:

<u>Applicability of the circular</u>

The circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 is applicable to all employee benefit schemes involving the securities of the company provided that the schemes are set up, managed or financed by the company Page 2 of 5 directly or indirectly. Thus, the circular shall be applicable if any of the following conditions are satisfied directly or indirectly. Thus, the circular shall be applicable if any of the following conditions are satisfied:

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a) if the company has set up the scheme or the trust/agency managing the scheme; or

b) if the company has direct or indirect control over the affairs of the scheme or the trust/agency managing the scheme; or

c) if the company has extended any direct or indirect financial assistance to the employee benefit schemes or the trust/agency managing such schemes.

Extension of time for aligning the employee benefit schemes with SEBI Guidelines

The circular dated January 17, 2013 required that all employee benefit schemes involving securities of the company shall be aligned with and made to conform to SEBI (ESOS and ESPS) Guidelines by June 30, 2013. It has been decided to extend the time limit for such alignment to December 31, 2013. Accordingly, in Clause 35C (ii) of the Equity Listing Agreement, the words "June 30, 2013" shall be replaced with **"December 31, 2013".**

However, further grant of options from the date of the circular i.e. January 17, 2013, shall be strictly in accordance with SEBI (ESOS and ESPS) Guidelines 1999. Accordingly, there shall not be any grant of options to employees ineligible under Clause 4.2 and 4.3 of the SEBI (ESOS and ESPS) Guidelines 1999 from January 17, 2013.

Holding of securities by Trusts beyond December 31, 2013

Employee benefits trusts which have already acquired securities of the company from secondary market before the date of the circular No. CIR/CFD/DIL/3/2013 i.e January 17, 2013, may continue to hold such securities beyond the date specified for alignment of the schemes with SEBI (ESOS and ESPS) Guidelines 1999 i.e. December 31, 2013, provided that the schemes have been aligned with SEBI (ESOS and ESPS) Guidelines 1999 and such securities are used only in accordance with such aligned schemes.

Continued holding of securities by non-ESOP employee benefit schemes

Existing employee benefit schemes involving securities of the company which does not involve granting of options to/ purchase of securities by employees shall be permitted to either:

a) hold the securities of the company already acquired by them beyond December 31, 2013 provided the schemes have been aligned with SEBI (ESOS and ESPS) Guidelines 1999; or

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b) hold the securities of the company already acquired by them beyond December 31, 2013 provided the schemes have been aligned with SEBI (ESOS and ESPS) Guidelines 1999; or

c) dispose-off the securities of the company held by them by December 31, 2013.

Additional disclosures

Listed companies shall disclose the following information to the stock exchanges in the prescribed format:

a) the details of benefits granted/shares allotted in the past upto January 17, 2013 in pursuance of employee benefit schemes involving securities of the company which are not in alignment with SEBI (ESOS and ESPS) Guidelines 1999, to the stock exchanges in the format prescribed at **Annexure I**, by June 30, 2013.

b) the details of benefits due/options granted and pending exercise as on January 17, 2013 in pursuance of employee benefit schemes involving securities of the company which are not in alignment with SEBI (ESOS and ESPS) Guidelines 1999, to the stock exchanges in the format prescribed at **Annexure II**, by June 30, 2013.

c) the details of allotments made/benefits granted post January 17, 2013 up to December 31, 2013 pursuant to employee benefit schemes involving securities of the company which are not in alignment with SEBI (ESOS and ESPS) Guidelines 1999 in the format prescribed at **Annexure III** within 7 days from the end of each quarter. The details pertaining to the quarter ended March 31, 2013 shall also be disclosed along with the quarter ending June 30, 2013.

SCHEME OF ARRANGEMENT UNDER THE COMPANIES ACT, 1956 – REVISED REQUIREMENTS FOR THE STOCK EXCHANGES AND LISTED COMPANIES – CLARIFICATION

This is with reference to SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 on the captioned subject wherein certain requirement were imposed on Listed Companies undertaking any scheme of arrangement under the Companies Act, 1956.

Subsequent to the issuance of the aforesaid Circular, SEBI has received queries/representations from market participants expressing operational difficulties in implementing certain provisions of the said Circular.

Accordingly, upon examination of the representations and concerns raised therein, SEBI has further issued a Circular no. CIR/CFD/DIL/8/2013 dated 21/05/2013 and provided clarifications and amended certain provisions of the said Circular as detailed below:

Applicability:

SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 is applicable to all listed companies undertaking a Scheme of Arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.)

Thus, it is hereby clarified that the Circular referred to in paragraph 3.1 above and this Circular are applicable even to cases where no exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is sought from SEBI.

Requirement of submission of Valuation Report from Independent Chartered Accountant:

All listed companies undertaking a Scheme of Arrangement under Part IV and Chapter V of Part VI of the Companies Act, 1956, (Amalgamation/ Merger/ Reconstruction/ Reduction Of Capital, etc.) are required to submit a valuation report in terms of Para (I) (A) read with Part A, Annexure I of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

However, 'Valuation Report from an Independent Chartered Accountant' need not be required in cases where there is no change in the shareholding pattern of the listed company / resultant company.

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For the limited purpose of this Circular, 'change in the shareholding pattern' shall mean;

(a) change in the proportion of shareholding of any of the existing shareholders of the listed company in the resultant company; or

(b) new shareholder being allotted equity shares of the resultant company; or

(c) existing shareholder exiting the company pursuant to the Scheme of Arrangement

Further, a few examples meaning 'no change in shareholding pattern' are illustrated below:

i. In case a listed entity (say, "entity A") demerges a unit and makes it a separate company (say, "entity B");

a. if the shareholding of entity B is comprised only of the shareholders of entity A; and
b. if the shareholding pattern of entity B is the same as in entity A; and
c. every shareholder in entity B holds equity shares in the same proportion as held in entity A before the demerger. it will be treated as 'no change in shareholding pattern'.

ii. In case a wholly-owned-subsidiary (say, "entity X") of a listed entity is merged with the parent listed company (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'.

In all other cases, 'Valuation Report from an Independent Chartered Accountant' shall be required.

For the limited purpose of this Circular, 'resultant company' shall mean a company arising / remaining after the listed company undertakes a Scheme of Arrangement.

Para 5.3 of Circular dated February 4, 2013 is modified as follows:

5.3 If a company is listed on any stock exchange having nationwide terminals and/or regional stock exchange, it shall choose the stock exchange having nation-wide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI.

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5.3.(a) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is sought, the company shall obtain in-principle approval for listing of equity shares on any stock exchange having nationwide trading terminals.

5.3.(b) For companies listed solely on regional stock exchange, wherein exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 is not sought by the company, the following shall apply:

One of the stock exchanges having nationwide trading terminals shall provide a platform for dissemination of information of such Schemes and other documents required under the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013. For such purpose, stock exchanges having nationwide trading terminals may charge reasonable fees from such companies.

Following clause shall be inserted in Para 5.10 of the Circular dated February 4, 2013 in view of 5.3 (a) above:

5.10 (d) Date of receipt of copy of in-principle approval for listing of equity shares of the company seeking exemption from Rule 19(2)(b) of Securities Contracts (Regulation) Rules, 1957 on designated stock exchange, in case the company is listed solely on regional stock exchange.

Para 5.16 of the Circular dated February 4, 2013 shall stand replaced as under:

5.16 (a) Listed companies shall ensure that the Scheme submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution, in the following cases:

i. Where additional shares have been allotted to Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the listed company, or

ii. Where the Scheme of Arrangement involves the listed company and any other entity involving Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group.

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iii. Where the parent listed company, has acquired the equity shares of the subsidiary, by paying consideration in cash or in kind in the past to any of the shareholders of the subsidiary who may be Promoter / Promoter Group, Related Parties of Promoter / Promoter Group, Associates of Promoter / Promoter Group, Subsidiary/(s) of Promoter / Promoter Group of the parent listed company, and if that subsidiary is being merged with the parent listed company under the Scheme. Such Schemes shall also provide that the Scheme shall be acted upon only if the votes cast by the public shareholders in favor of the proposal are more than the number of votes cast by the public shareholders against it. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.

5.16 (b) For all other cases, the requirements stated at 5.16 (a) shall not be applicable. In such cases, the listed entities shall furnish an undertaking certified by the auditor and duly approved by the Board of the company, clearly stating the reasons for non-applicability of Para 5.16 (a).

5.16 (c) The undertaking as referred to in Para 5.16 (b) above shall be displayed on the websites of stock exchanges and the listed company along with other documents submitted, as stipulated under Para 2, Part A, Annexure I, of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

5.16 (d) Any mis-statement or furnishing of false information with regard to the said undertaking would be viewed seriously and liable for punitive action as per the provisions of applicable laws and regulations.

5.16 (e) For the purpose of this Circular, 'Related Party' shall carry the same meaning as defined under AS 18 or IND AS 24.

Applicability of this Circular: The Circular is applicable to listed companies undertaking Scheme of Arrangement which are governed by the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013.

Post Budget Changes in Custom and Excise Duty rates With Effect From 08.05.2013

Notification Nos. 16/2013-Central Excise, 25/2013-Customs and 26/2013 –Customs, all dated 8th May, 2013 have been issued on 08.05.2013. The changes made in the duty rates are summarized below.

EXCISE DUTY

1. Excise duty on jaggery powder has been reduced from 12 % to 2 % (without CENVAT) and 6 % (with CENVAT). For this purpose, notification No. 1/2011-CE and 2/2011-CE, both dated 1-3-2011 have been amended by Notification No.16 /2013-Central Excise, dated 08.05.2013. New serial number 9A in notification No. 1/2011-CE and 2A in Notification No. 2/2011-CE may be referred to for details.

2. Particle/Fibre Board manufactured from agricultural crop residues have been exempted from excise duty. Serial number 330 of notification No. 12/2012-Central Excise, dated 17-03-2012 has been suitably amended by Notification No. 16/2013-CE, dated 8-5-2013 to provide for this change.

3. Excise duty on flattened bamboo boards and bamboo flooring tiles has been reduced from 12% to 2% without CENVAT credit and 6% with CENVAT credit. Notification No. 16/2013-Central Excise, dated 08-05-2013 may be referred to for details.

4. Clay bricks (Tariff Item 69010010) and roofing tiles (Tariff Item 69051000) have been exempted from excise duty. Amendments have been carried out in notification Nos. 1/2011-CE and 2/2011-CE, both dated 1.3.2011 and 12/2012-CE, dated 17.3.2012 by notification No. 16/2013-Central Excise, dated 08-05-2013. New serial numbers 187A and 187B of Notification No. 12/2012-CE may be referred to for details.

5. Steel supplied to the Indian shipyards manufacturing ships and vessels [CETH 8901, 8902, 8904, 8905 (except sub heading 8905 20) or 8906] in accordance with the provisions of section 65 of Customs Act,1962 has been exempted from excise duty subject to fulfillment of certain conditions. A new serial number 306B has been inserted in notification No. 12/2012-CE by Notification No. 16/2013-Central Excise, dated 08-05-2013.

Cont…

CUSTOMS DUTY

1. Exemption from basic customs duty (BCD) has been extended to Liquefied Natural Gas (LNG) and Natural Gas (NG) imported by 2 PSUs, namely, GAIL NTPC JV and Petronet LNG Ltd. for supply to a generating company as defined in section 2(28) of the Electricity Act,2003 subject to fulfillment of certain conditions. For this purpose, Notification No. 12/2012-Customs, dated 17.03.2012 has been amended by Notification No. 25/2013-Customs, dated 08.05.2013. New serial number 139A of Notification No. 12/2012-Customs, dated 17.3.2012 may be referred to for details.

2. The basic customs duty (BCD) on titanium dioxide falling under heading 28.23 has been enhanced from 7.5% to 10%. Henceforth, titanium dioxide, regardless of its classification under heading 28.23 or 32.06, will attract a uniform duty at 10%. Serial number 150 of notification No. 12/2012-Customs has been amended by Notification No. 25/2013-Customs, dated 08.05.2013 to provide for this change.

3. The basic customs duty (BCD) on polymers (CTH 3901, 3902, 3903 and 3904) including ethylene vinyl acetate (EVA) has been increased from 5% to 7.5%. Notification No. 25/2013-Customs, dated 08-05-2013 amending S. Nos. 231, 237, 238, 239 and 240 of Notification No. 12/2012-Cutoms may be referred to for details.

4. The basic customs duty on iron or steel scrap including stainless steel scrap (CTH 7204) has been increased from Nil to 2.5%. Serial numbers 332 & 333 of notification No. 12/2012-Customs have been amended by Notification No. 25/2013-Customs, dated 08.05.2013 to provide for this change.

5. The basic customs duty on aluminium scrap (CTH 7602) has been increased from Nil to 2.5%. Serial number 338 of notification No. 12/2012-Customs has been amended by notification No. 25/2013-Customs, dated 08.05.2013 to provide for this change.

6. The exemption from special additional duty (Special CVD) on brass scrap has been withdrawn. The entry at serial number 80 of notification No. 21/2012-Customs, dated 17.03.2012 has been omitted by notification No. 26/2013-Customs, dated 08-05-2013 to effect this change.

Notification Nos. 16/2013-CE, 25/2013-Customs and 26/2013-Customs, all dated 08.05.2013 may kindly be perused to note the changes

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Reserve Bank of India Circular no.: A.P. (DIR Series) Circular No. 104 May 17, 2013

FOREIGN DIRECT INVESTMENT (FDI) IN INDIA

ISSUE OF EQUITY SHARES UNDER THE FDI SCHEME ALLOWED UNDER THE GOVERNMENT ROUTE AGAINST PRE - OPERATIVE / PRE - INCORPORATION EXPENSES

Attention of Authorised Dealers Category – I banks is invited to Para 3 (II) of A.P. (DIR Series) Circular No. 74 dated June 20, 2011 read with A.P. (DIR Series) Circular No. 55 dated December 9, 2011, allowing thereby issue of equity shares/ preference shares under the Government route by conversion of import of capital goods, etc., subject to terms and conditions stated therein.

On review of the policy, it has now been decided to amend condition at (c) in the aforesaid para. The amended condition is given as under:

c.f. A.P.(DIR Series) Circular No. 74 dated June 30, 2011	**Earlier Condition**	**Revised condition**
Para 3(II)(c)	Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and	**Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations; and**

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Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 52 dated November 20, 2012 extending the enhanced period for realization and repatriation to India, of the amount representing the full value of goods or software exported, from six months to twelve months from the date of export. This relaxation was available up to March 31, 2013.

The issue has since been reviewed and it has been decided, in consultation with the Government of India, to bring down the above stated realization period from twelve months to **nine months from the date of export, with immediate effect, valid till September 30, 2013.**

The provisions in regard to period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.

AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

The directions contained in this circular have been issued under sections 10 (4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

MANNER OF DEALING WITH AUDIT REPORTS FILED BY LISTED COMPANIES

This is with respect to the SEBI circular no. **CIR/CFD/DIL/7/2012 dated August 13, 2012 and** subsequent amendment in the Equity Listing Agreement under **Clause 31(a**).

The SEBI circular had inter-alia amended the clause 31(a) of the listing agreement by advising the listed companies to submit the following forms, as may be applicable, along with copies of annual reports submitted to Stock Exchanges:

- Form A: Unqualified/Matter of Emphasis Report
- Form B: Qualified/Subject to/Except for Audit Report

As listed out in the said circular, companies are required to ensure that :

- Form A or Form B as applicable is submitted with copies of the Annual Report. Non-submission of Form A / Form B may be treated as non-submission of Annual Report and thus non-compliance with clause 31(a) of the listing agreement.

- The relevant Form, i.e. Form A / Form B is submitted. Submission of incorrect Form may be treated as non-submission.

- Form A or Form B is signed by ALL the four entities mentioned in the SEBI circular i.e. CEO/ MD, CFO, Auditor and the Chairman of the Audit Committee. Form A or Form B not signed by all four mandated entities would be considered as incomplete submission.

- Management comments are also submitted on the Auditors' qualifications in case Form B is submitted.

Companies are required to comply with the above and extant provisions of the said SEBI Circular in relation to all annual audited financial results submitted for the period ending on or after December 31, 2012.

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

REVISED GUIDELINE FOR AVAILING 45 DAYS LEAVE DURING 15 MONTHS TRAINING

The council of the Institute has revised the guideline for grant of leave during the 15 months training to the students of Company Secretaryship Course by **withdrawing 45 days** or balance leave to trainees who have passed Final / Professional Programme examination and **allowed only 15 casual leaves** to the candidates undergoing training who have passed Final / Professional Programme examination.

The leave of 45 days during the training will be applicable only for Intermediate / Executive Programme passed students for preparation of Professional Programme examination.

The decision will be effective on the students commencing training on or after 1st March, 2013

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