

I. Income Tax

1. Payment for purchase of license to use software taxable as 'royalty'

The Karnataka Tax Tribunal in a recent case of ING Vyasa Bank has ruled that the payment for purchase of license to use software would be taxable as 'Royalty' under the Indo-Swiss tax avoidance treaty. The Tribunal held that the software was not customized nor could it be modified. ING Vyasa had limited rights to its usage and hence, no intellectual property was transferred. It was only 'right to use of intellectual property and hence taxable as royalty.

2. Foreign exchange gains on proceeds of GDR issue are capital receipt

In the case of Jagjit Industries, the Delhi High Court has held that the gains realized by the company on realization of proceeds of share capital raised abroad in the form of GDR would be classified as capital receipt. The High Court held that the relevant consideration to identify the nature of the receipt would be the source of funds under which the gains were held and not its ultimate utilization.

II. Corporate Laws

a. Due date of filing financials in XBRL format extended

The due date of filing of financial statements in XBRL format has been extended to December 31, 2011 from November 30, 2011.

Earlier this year, filings in XBRL format had been made mandatory for companies fulfilling the prescribed conditions. The validation tool was released on October 14, 2011 and revised on November 23, 2011.

b. Applicability and compliance requirements for Cost Accounting records and audit

The Ministry of Company Affairs has issued a Master Circular on Cost Accounting Records and Audit summarizing and reviewing the Circulars issued till date on these subjects. The key highlights of the circular are

- 1.** Cost auditor cannot also be the internal auditor of a company for the period for which he is conducting the cost audit.
- 2.** The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government.
- 3.** In case where a firm of cost accountants is approved for appointment as cost auditors, the report shall be signed by any one of the partners.
- 4.** Cost auditors should maintain discussions with the audit committee periodically about internal control systems.
- 5.** Cost auditor shall attend all meetings of the audit committee or the board, but shall neither be a member nor have the right to vote.

c. Clarifications regarding coverage of cost accounting records and cost audit on certain sectors

The Ministry of Company Affairs has clarified through a Circular that Cost Accounting records and Audit are not required in specific cases. Some of the exempted sectors and cases are as follows

- Trading, Finance, Insurance, education and tourism unless specifically covered
- Companies engaged in rendering job work operations or contracting/sub-contracting activities
- Companies engaged in the production, processing, manufacturing or mining activities till such time they commences their commercial operations
- Generation of electricity for captive consumption.
- Hundred percent export oriented units.

d. Clarifications regarding applicability and compliance of cost accounting records and cost audit on certain sectors

The Ministry of Company Affairs has clarified the applicability and compliance of Cost Accounting records and Audit through a circular. Key highlights of the Circular are as follows

- Companies covered under Companies (Cost Accounting Records) Rules, 2011 shall only file a compliance report.
- Cost records & cost details are required to be maintained for the next 8 years.
- Has to prepare a consolidated cost audit report if more than one cost auditors are appointed for one product only & be signed by all the cost auditors.
- Can prepare a consolidated/separate cost audit report if more than one cost auditors are appointed, for more than one product.
- Audit committee shall obtain a certificate from the cost auditor certifying his independence with the company.

III. FEMA/RBI/SEBI**a. Validity of Cheques reduced**

In an effort to reduce off the book transactions by circulation of cheques, the Reserve Bank of India (RBI) has reduced the time period of presentment of cheque to three months from the date of issue. Earlier, a cheque could be presented within a period of six months of the date of cheque.

Further, the RBI has asked the banks to issue demand drafts for Rs. 20,000 and above with account payee crossing only. RBI has also instructed the banks to not collect account payee cheques for any person other than the payee constituent.

b. Liberalisation of norms for transfer of shares between resident and non-residents

The transfer of shares from a Resident to a Non Resident where

- the transfer does not conform to the pricing guidelines as stipulated by the Reserve Bank from time to time



- the transfer of shares requires the prior approval of the FIPB as per the extant Foreign Direct Investment (FDI) policy;
- the Indian company whose shares are being transferred is engaged in rendering any financial service;
- the transfer falls under the purview of the provisions of SEBI (SAST) Regulations, require the prior approval of the Reserve Bank of India.

The RBI has now decided to allow the above transfer without prior approval from RBI subject to specified conditions. In general, where the company has the permission from the regulator/FIPB/SEBI, fulfills the FDI norms before and after the transfer and has obtained a compliance certificate from Chartered Accountant to that effect, no prior approval from RBI would be required.

c. All-in-cost ceilings for Trade Credit and ECBs increased

Considering the current outlook of the global financial markets, RBI has revised the all-in-cost ceilings for Trade Credits and External Commercial Borrowings. The revised ceilings are as under.

	Maturity Period	All-in-cost over 6 month LIBOR	
		Existing	Revised
Trade Credits	Upto one year	200 bps	350 bps
	More than 1 year and upto 3 years		
ECBs	Three years and up to five years	300 bps	350 bps
	500 bps	500 bps	
	More than five years		(no change)

The revised limits are applicable till March 31, 2012.

d. Interest subvention scheme on housing loans upto Rs. 10 Lakh extended

Previous year the Govt had introduced an 1 % interest subvention scheme on housing loans upto Rs. 10 lakh. The scheme has now been extended from March 31, 2011 to March 31, 2012. Now, the 1% interest subvention would be available for all loans sanctioned/disbursed upto March 31, 2012.

e. Interest subvention of 2% on rupee export credit on specified export sectors

Government of India has decided to extend interest subvention of 2% on rupee export credit on specified export sectors from April 1, 2011 to March 31, 2012. The sectors covered are

- Handicrafts
- Handlooms
- Carpet
- Small and Medium Enterprises (SMEs)

The amount of subvention will be calculated on the outstanding amount of rupee export credit from the date of disbursement up to the date of repayment or up to the date on which the outstanding export credit becomes overdue, whichever is earlier. Other terms and conditions remain the same as earlier.

f. Last date for realisation period of 12 months of export proceeds extended

In March 2011, the Government of India had extended the period of realization and repatriation of export proceeds in the case of export of goods and software to 12 months the date of export from the previous six months. The extension was available upto September 30, 2011. Now, the extension has been further extended to September 30, 2012.

IV. Indirect taxes

a. Service tax on import of services applicable from April 18, 2006

Accepting the stand taken the courts in various cases, the Central Board of Excise and Customs has clarified that service tax liability on any taxable service provided by a non-resident or a person located outside India, to a recipient in India, would arise with effect from April 18, 2006, the date of enactment of Section 66A of Finance Act, 1994.

Previous instruction stating the date of applicability from January 1, 2005 stands rescinded.

Relevant due dates for the month of December 2011**Income Tax**

7th December	Deposit TDS/TCS deducted/collected during the month ended November 30, 2011
15th December	Due date for deposit third (corporates)/second (non-corporates) instalment of income tax

Service Tax

5th/6th December	Deposit Service Tax liability of corporate assesseees for the month ended November 30, 2011
26th December	Due date for filing of return of service tax for the half-year ended September 30, 2011 as extended

Excise Duty

5th/6th December	Deposit Excise duty liability for the month ended November 30, 2011
10th December	Submit return of Excise Duty for liability for the month ended November 30, 2011

DVAT

25th December	Deposit VAT/ CST for the month ended November 30, 2011.
25th December	Submit monthly return in electronic form for the month ended November 30, 2011.
28th December	Deposit monthly return in manual form for the month/ quarter ended November 30, 2011.

Labour Law

15th December	Deposit Employee's & Employer's contributions to provident fund for the month ended November 30, 2011 (grace of 5 days)
21st December	Deposit ESI dues for the month ended November 30, 2011
26th December	Submit return of Provident Fund for the month ended November 30, 2011

