

I. Income Tax

a. Arm's Length Transaction cannot be disallowed by Assessing Officer

In a recent judgement in the case of Oracle India, the Delhi High Court has held that once a transaction is determined to be at Arm's Length by the Transfer Pricing Officer, the Assessing Officer cannot disallow the same under Sec 37. In the said case, the Company imported software from its US associate enterprise, on which royalty was being paid. The Court held "Payment of royalty is business expenditure. The nature of the expenses is also not such which would fall in any of the exceptions carved out under Section 30 and 36 of the Act. Once these conditions are satisfied, the expense is to be allowed in toto as business expenditure, and the Revenue cannot sit in the chair of the assessee and decide as to how affairs of the business are to be conducted."

b. TP provisions are applicable even in the absence of motive to avoid taxes

Delhi ITAT in a recent judgement has clarified a longstanding issue with respect to transfer pricing. Transfer Pricing was introduced in India and other countries primarily with an objective to deny abuse of favourable tax regimes by companies having multi location presence. An important question comes then whether transfer pricing would be applicable where there is no benefit of such planning.

The Delhi Tribunal has held that there is no requirement to prove motive to shift profits outside India or to evade taxes in India for application of transfer pricing provisions. There is no specific provision in the Income Tax Act which states that Transfer Pricing provisions will come into play once a motive to avoid taxes is present.

c. Section 14A not applicable if no exempt income is earned in the relevant year.

Sec 14A aims to disallow deduction of expenditure in relation to tax exempt income. The Madras ITAT in a recent judgement has held, that where the assessee has not earned any exempt income during an year, no disallowance can be made under Sec 14 A can be made in that year.

d. No liability to pay advance tax if non-resident assessee subject to TDS

It was held that where receipts by assessee-nonresident were subject to deduction of tax at source, there was no liability of assessee to pay advance tax and, thus, interest under section 234B could not be levied on an assessee

e. Error correction mechanism in Tax Challans improved from Sept 1, 2011

In order to mitigate hardship of the tax payers in respect of correction of the errors in the tax challans deposited by the assessee, a new mechanism of challan correction has been introduced widening the power of the banks to rectify the errors in such challans. Now, the depositing bank correct the errors in following cases

- | | | |
|-----------------------------|--------------|---------------------|
| - Incorrect Assessment Year | - TAN/PAN | - Total Amt |
| - Major Head Code | - Minor Head | - Nature of Payment |

Previously, corrections in challan could only be made by the Tax Assessment Officers requiring lengthy amount of time.

f. Due date for filing of ITR-V for A.Y. 2010-11 Extended

Due date of filing of the ITR-V for the Assessment Year 2010-11 has been extended to October 31, 2011 or 120 days whichever is later.

II. Corporate Laws

a. Company Law Settlement Scheme

As an incentive to all defaulting companies to bring to date their corporate law compliances, Ministry of Company Affairs (MCA) has introduced the Company Law Settlement Scheme, 2011. The Scheme provides for condonation of delay of filing of documents and provide immunity from prosecution for delay in filing of documents. Similar to the scheme released in 2010, only 25% additional fees shall be payable. The Scheme is only applicable for Form 20B, Form 23AC, Form 23ACA, Form 66 and is available only till October 31, 2011.

b. Revised XBRL Taxonomy released

After receiving inputs from Industry and Professionals, MCA has released the revised taxonomy for XBRL. Revisions to original taxonomy include addition of items relating to the fixed assets schedule, changes for alignment to Indian GAAP presentation, and deletion of the Clause 41 section of the taxonomy.

XBRL is the new business reporting language gaining popularity around the world. For financial year ended March 31, 2011, MCA has mandated that the specified companies shall file their financial statements in XBRL format.

III. FEMA/RBI/SEBI

a. Daily SMS/Email Alerts for transactions on the Capital Market

Vide Circular No. CIR/MIRSD/15/2011 dated 2nd August 2011, SEBI has directed that the details of the transactions done on each trading day shall be sent by the Stock Exchanges to the investors, by the end of each trading day, through SMS and E-mail alerts.

b. RBI allows pre-paid cards for corporate reimbursements

Indian companies can now pay perks to their employees in plastic money. In a move that could pave the way for cashless settlements of perquisites and reimbursements, RBI on Thursday allowed banks to issue pre-paid payment instruments to corporates for onward issuance to their employees.

"Pre-paid payment instruments can be issued only to corporate entities listed in any of the stock exchanges in India," said RBI in its notification.

The pre-paid card can be loaded with a maximum value outstanding of 50,000. According to RBI norms, the corporate would be responsible for the verification of identity of the employee.

c. Penalties under FCRA

The Ministry of Home Affairs (MHA) has notified the Penalties or accepting contribution from foreign sources without registration or prior permission of the Central Government. The Penalties range from Rs. 10,000 to 5% of the foreign contribution involved. As per Foreign Contributions Regulations Act (FCRA), each organization receiving any contribution from a foreign source is required to either register itself with MHA or obtain prior permission from MHA.

The notification further specifies that the Director or Deputy Secretary in charge of the FCRA Wing of the Foreigners Division in the Ministry of Home Affairs shall be the authority for exercising the powers for compounding of an offence under the Act.

d. Contingency plan during strikes in banks / natural calamity- Arrangements for feeding of ATMs

The need for replenishing cash in the ATMs of banks, especially in times of strikes in banks/natural calamity so as to mitigate hardships caused to bank customers, was examined by RBI. It has now been decided that as a customer service initiative, RBI will allow the banks to replenish cash at their ATMs by withdrawing cash from RBI in the event of strike in the entire Banking Sector excepting RBI or in the event of any natural calamity in the region/country. Banks may avail of this facility on the days of strike / natural calamity and for this purpose.

IV. Indirect taxes**a. Online filling of Service Tax Return made Compulsory for all Assesseees**

Central Board of Excise and Customs has made it mandatory for all assesseees required to file return of Service Tax to file them electronically through the ACES website. The notifications takes effect from October 1, 2011, i.e., all returns filed for the half-year ended September 30, 2011 will have to be filed electronically. Existing assesseees not having login detail for the ACES website should approach the Service Tax Department for obtaining the same.

b. No VAT on Sim Cards – Only Service Tax

In a recent judgement, Hon'ble Supreme Court (SC) has settled the long-standing dispute over the Service Tax or Sales Tax or both on the value of Sim Card. Both Service Tax Department and Sales Tax Department had been claiming that the sale would fall under their jurisdiction. However, the SC ruled in the favour of Service Tax Department. The Apex Court held that value of SIM Cards will form part of activation charges (as no activation is possible without a valid functioning of SIM Card) and the value of taxable service to be calculated on the gross total amount received by the operator from subscribers. Apex Court also observed that sales tax is not applicable on sale value of SIM Card simply because SIM Card itself has no intrinsic value.

c. Refund of 4% CVD (SAD) - Extension of time upto September 15, 2011 for using re-credited 4% CVD (SAD) amount in DEPB

The Customs department has extended the date for procedure of refund of 4% Countervailing duty where manual filing of Bill of Entry for utilizing the amount of re-credited 4% CVD refunds (SAD) for payment of duty in case of re-credited DEPB/ Reward Scheme scrips. Previously, such refund could be claimed only June 30, 2011. The above extension is subject to following conditions.

- The extension of utilization of re-credited amount of SAD refund in relevant scrip is granted for two months i.e. upto September 15, 2011. No further extension shall be given.
- The importers shall utilize re-credited amount of SAD refund in scrips for payment of CVD and BCD only and not for payment of SAD subsequently.

V. Delhi Value Added Tax**a. UCO Bank authorized for e-payment**

To ease the process of deposit of tax, Department of Value added tax of Delhi has included UCO Bank in the scheme for payment of tax, interest, penalty or any other dues under the DVAT Act, 2004, through electronic payment.

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

7th September	Deposit TDS/TCS deducted/collected during the month ended August 31, 2011
15th September	Deposit of installment of advance income tax by corporate and other assesseees for financial year 2011-12
30th September	Last date of Filing of Income tax return for companies and assesseees who are required to get their books audited under Income Tax Act. (Mandatory use of Digital Signatures)

Service Tax

5th/6th September	Deposit Service Tax liability of corporate assesseees for the month ended August 31, 2011
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Excise Duty

5th/6th September	Deposit Excise duty liability for the month ended August 31, 2011
10th September	Submit return of Excise Duty for liability for the month ended August 31, 2011

DVAT

25th September	Deposit VAT/ CST for the month ended August 31, 2011
25th September	Submit monthly return in electronic form for the month ended August 31, 2011.
28th September	Deposit monthly return in manual form for the month/ quarter ended August 31, 2011. (Mandatory affix Annexure 2A and Annexure 2B with the return)

Labour Law

15th September	Deposit Employee's & Employer's contributions to provident fund for the month ended August 31, 2011 (grace of 5 days)
21st September	Deposit ESI dues for the month ended August 31, 2011
26th September	Submit return of Provident Fund for the month ended August 31, 2011