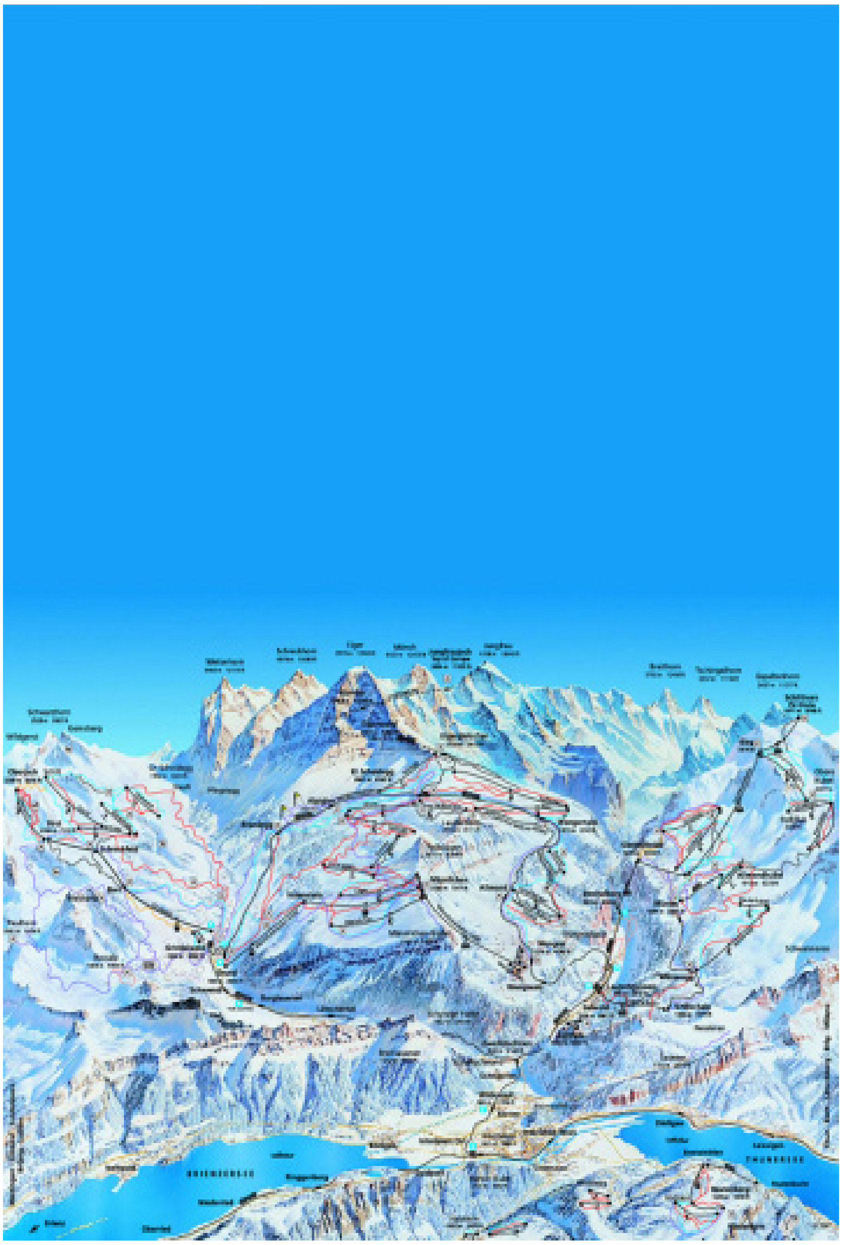
April 2015

India journal

www.wts.in

#4.2015



HIGHLIGHTS IN THIS EDITION

TAX | Direct Taxes

- Introduction of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015
  DTAA with Columbia and Bhutan made effective from April 1, 2015
- Dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India not covered by provisions of Explanation 5 to section 9 (1) (i) of the Act
- Income Computation and Disclosure Standards ("ICDS") notified
- Advance Pricing Agreement roll-back rules notified

FOREIGN EXCHANGE MANAGEMENT ACT

- Foreign Exchange Management Act, 1999 – Import of Goods into India
- Foreign Direct Investment – Reporting under FDI Scheme on the e-Biz platform
- Liberalised Remittance Scheme ('LRS') – Limit enhanced to USD 250,000
- Acquisition/transfer of immovable property – Prohibition on citizens of certain countries

NON BANKING FINANCE COMPANIES

- Revised Regulatory Framework for Non-Banking Finance Companies ("NBFCs")

CORPORATE LAWS

- Notification Of Indian Accounting Standards (IND AS)

INDEX

Page

Saskia Bonenberger
Executive Director
WTS India

Dear Reader,

The expectation towards the government are still very high, so high, that they can hardly be met. One clear demand from the common man was to fight Corruption and Black Money. On march 20th the government presented a bill concerning Black Money stashed abroad. The proposals as made are very strict, it might get even a lot of people into the light of crime, who are not generally targeted, like foreign expats working in India, or Indians having worked for years abroad and having a savings account abroad. The question is, how the tax officers on the ground level will deal with such a law. Many aspects are also not clearly framed.

There is also a proposal to provide one time opportunity to people to declare their assets on payment of tax and penalty, thus avoiding prosecution. Litigation period, old years, inherited, or in a divorce from a foreign spouse gifted money. For sure the accounts, which are used for doubtful purposes can even not be solved so quickly. A lot of questions arise, but on the other hand, exchange of information on accounts will come for sure to India, the OECD approach is very clear, so everybody is advised to get these foreign accounts quickly solved, time is running short and there will be in my opinion hardly more than three to five years for this task left. In families the question of ownership of these accounts is also challenging. But one thing is sure: The private side of income through interests, dividends, shares, floating rate notes and all the cleverly invented financial instruments and products will get more and more importance. In the beginning only few people have expertise in this kind of income, slowly by slowly tax authorities will specialize and then with more cases coming up, the real threat will grow. The danger is, that with this law, in three years it will be too late. The topics might have to be solved in this financial year only, as there will be no punishment for a very short period of time. So let us use this opportunity and start thinking of solving old problems. Their complexity shows that in last minute there will be too many cases and time pressure will be high.

Yours sincerly

I. Delhi High Court upholds characterization of AMP expenditure as international transaction but rejects 'Bright-Line Test' to benchmark the same | *Author: Jatinder Singh, New Delhi*

In a recent judgment in the case of Sony Ericsson Mobile Communication India Pvt. Ltd. [ITA No. 16/2014] and various other appellants, the High Court of Delhi ("HC") has held that Transfer Pricing Officer ("TPO") can exercise jurisdiction over transactions not reported by the taxpayer and that Advertisement, Marketing and Sales promotion ("AMP") expenditure resulting in promotion of Brand was held to be an international transaction. It also held that the 'Bright Line Test' for benchmarking AMP expenditure, as confirmed by Special Bench ("SB") of Income Tax Appellate Tribunal, Delhi ("ITAT") in the case of LG Electronics India Private Limited [2013] 152 TTJ 273 (Del), is erroneous and inapplicable.
The appellant(s) were engaged in distribution and marketing of imported and branded products, manufactured and sold to them by their Associated Enterprises ("AE"). The appellant(s) incurred AMP expenses in India resulting in promotion of Brand, which were found to be excessive by the TPO vis-à-vis expenses incurred by unrelated comparable entities. The TPO considered such excess expenditure as International transaction, upon application of Bright Line Test, on the ground that they led to brand building of the AE in India. The TPO accordingly held that such expense, being more than routine AMP expenses, should have been compensated by the AE alongwith a reasonable margin.

The appellant(s) subsequently filed an appeal before ITAT, wherein it was argued that AMP expenses as incurred did not constitute an International Transaction and that the TPO did not have jurisdiction to adjudicate the same. The ITAT, however, affirmed the order of TPO following the order of SB of ITAT, Delhi in the case of LG Electronics. In the LG case, the SB had held that expenditure incurred on AMP would constitute an international transaction, as it leads to building and promoting brand of the foriegn AE in India. The SB further observed that in order to examine the legitimate amount of AMP expenditure 'Bright LineTest' can be applied, event though it does not form part of the statute.

Subsequently, appeals were filed before HC, wherein various legal and factual arguments were raised by the appellant(s) and the revenue. The important findings of the HC are as under:

- Jurisdiction of TPO- The HC held that the retrospective amendment of section 92CA(2B) by Finance Act, 2012 clarified that the TPO has jurisdiction to adjudicate on International Transactions which has not been reported by the taxpayer in the certificate as filed.

- AMP activities constitute international transaction- The HC observed that the taxpayer have themselves accepted that the declared price of international transaction (import of goods, etc.) included the cost/ value of AMP function, for which they stand duly compensated in their margins. The HC also observed that the issue was not in relation to the reasonableness of the AMP expenses rather it was in realtion in adequacy of compensation for incurring and performing AMP expenditure. Accordingly, even though the AMP expenses were incurred by the taxpayer toward third parties in India, it will still constitute an International Transaction.

- Segregation of inter-linked transaction and application of Transactional Net Margin Method ("TNM method)- The HC while discussing the transfer pricing provisions held that the word 'International Transaction' does not mean an independant transactin but a class of international transactions which are closely linked/ inter connected and the methods prescribed under the statute to determine arm's length price can effectively and reliably applied to a transaction or closely linked transactions.

Whlw analyzing the manner of application of TNM method, HC observed that once the tax officer accepts and adopts TNM method butr chooses to treat a particular expenditure like AMP as a seperate international transaction, it would lead to unusual and incongruous results. It explained that such expenses are the cost, part of other transactions with AE, which is not diverse and is factored in the net profit of the inter-linked transaction. As such, AMP expenses cannot be segregated and benchmarked separately. The HC, however, emphasized that the comparable chosen under TNM Method have to be functionally comparable or the instances where functional difference, if any, exists, could be reasoably ascertained and adjusted.

- Brand building as a result of AMP expenses - The SB in the case of LG Electornics (supra) had held that AMP expenses incurred by the taxpayer contribute towards the brand building of the foreign AE. The HC, however, observed that expenditure incurred for promoting product with an already known brand name is for exploitation of the trademark rather than development of its value. The valud of brand depends upon the nature and quality of goods and services sold or dealt with. Advertisement on the other hand is a way to increase the sales and therby the margins of the tazpayer. However, the HC also ruled that economic ownership of market intangibles would arise in case of advertisement and marketing functions performed by taxpayer in the long term contract. In such cases, the HC ruled that transfer pricing valution would be mandated at the time of termination of contract or when economic ownership gets transferred. The international transaction could then be a subject matter of TP and subjected to tax.

- Bright line Test - The HC rejected the 'Bright Line Test' stating that there is no material or justification to hold that no independent party would incur the AMP expenses beyond Bright Line AMP expenses. Further, an independent third party would be willing to incur heavy and substantial AMP expenses, if he presumes this is beneficial, and he is adequately compensated.

The HC set aside the order of ITAT for de novo consideration based on the principles laid down by the High Court. It directed examination as to whether the tax payer has been adequately remunerated by way of lower purchase price, reduced payment of royalty or payment in some other form. In this regard, the HC ruled that such set off in case of bundeld transaction is also not prohibited in terms of the provisions of the Act.

Contact: subhasis.banerjee@wts.co.in

TAX DIRECT TAXES
Recent Notifications

I. Introduction of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015| *Author: Jatinder Singh, New Delhi*

In order to fulfill the commitment made by the Government to the people of India to realize black money stashed abroad by Indian residents, the 'Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015' has been introduced in the Parliament on 20.03.2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act but under the stringent provisions of the proposed new legislation.

The salient features of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 are as under:-

1. The Act will apply to all persons resident in India (other than 'not ordinarily resident') from assessment year commencing on or after 1.4.2016. The provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity).

2. Undisclosed foreign income or assets shall be taxed at the flat rate of 30 percent. No expenditure, exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed.

3. Undisclosed asset located outside India (including financial interest in any entity) shall be charged to tax on its fair market value, in the financial year in which such asset comes to the notice of the assessing officer.

4. The assessment or reassessment shall be made within 2 years from the end of the financial year in which notice for such assessment or reassessment was issued by the assessing officer.

5. The income-tax authorities shall exercise the powers and perform the functions of tax authorities under this Act.

6. The penalty for tax evasion on undisclosed foreign income or an asset located outside India will be equal to three times the amount of tax payable thereon.

7. Failure to furnish return in respect of foreign income or assets shall attract a penalty of Rs.10 lakh (Rs 1 million).

8. Failure to disclose information or furnishing inaccurate particulars in respect of foreign income or assets in the return shall attract a penalty of Rs.10 lakh (Rs 1 million).

9. The punishment for willful attempt to evade tax in relation to a foreign income or an asset located outside India will be rigorous imprisonment from three years to ten years. In addition, it will also entail a fine.

10. Willful failure to furnish a return in respect of foreign assets and bank accounts or income will be punishable with rigorous imprisonment for a term of six months to seven years and with fine. The same term of punishment is prescribed for cases where although the assessee has filed a return of income, but has not willfully disclosed the foreign asset or has furnished inaccurate particulars of the same. The above provisions will also apply to beneficial owners or beneficiaries of such illegal foreign assets.

11. Abetment or inducement of another person to make a false return or a false account or statement or declaration under the Act will be punishable with rigorous imprisonment from six months to seven years. This provision will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.

12. Safeguards – The principles of natural justice and due process of law have been embedded in the Act by laying down the requirement of mandatory issue of notices to the person against whom proceedings are being initiated, grant of opportunity

of being heard, necessity of taking the evidence produced by him into account, recording of reasons, passing of orders in writing, limitation of time for various actions of the tax authority, etc. Further, the right of appeal has been protected by providing for appeals to the Income-tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.

13. To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of upto Rs.5 lakh (Rs 0.5 million) at any time during the year will not entail penalty or prosecution.

14. The Bill also provides a one-time compliance opportunity for a limited period to persons who have any undisclosed foreign assets which have hitherto not been disclosed for the purposes of Income-tax. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 percent and an equal amount by way of penalty. Such persons will not be prosecuted under the stringent provisions of the new Act.

15. The Central Government has been empowered to enter into agreements with other countries, specified territories and associations outside India inter alia for exchange of information, recovery of tax and avoidance of double taxation.

16. The Bill also proposes to amend Prevention of Money Laundering Act (PMLA), 2002 to include offence of tax evasion under the proposed legislation as a scheduled offence under PMLA.

The Government is confident that this new law will act as a strong deterrent and curb the menace of black money stashed abroad by Indians.

The above bill will come up for consideration/approval of the Parliament in due course.

Contact: subhasis.banerjee@wts.co.in

II. Dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India not covered by provisions of Explanation 5 to section 9 (1) (i) of the Act | *Author: Jatinder Singh, New Delhi*

The Finance Act, 2012 introduced Explanation 5 to section 9(1)(i) with retrospective effect from 1.4.1962 to clarify the legislative intent regarding the taxation of income accruing or arising through indirect transfer of a capital asset situate in India.

The Central Board of Direct taxes ("CBDT") has received representations that such an extended application of the provisions of the Explanation may result in taxation of dividend income declared by a foreign company outside India, which may cause unintended double taxation.

Based on such representations, the CBDT, after examining the matter, has clarified that as per Explanatory Memorandum to the Finance Bill 2012, the amendment of section 9(l)(i) was to reiterate the legislative intent in respect of taxability of gains having economic nexus with India irrespective of the mode of realisation of such gains. Explanation 5 deems any income arising outside India from any transaction in respect of any share or interest in a foreign company or entity, which has the effect of transfering, directly or indirectly, the underlying assets located in lndia, as income accruing or arising in India.

Since declaration of dividend by such a foreign company outside India does not have the effect of transfer of any underlying assets located in India, the CBDT has clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to section 9 (1) (i) of the Act.

Contact: subhasis.banerjee@wts.co.in

III. Income Computation and Disclosure Standards ("ICDS") notified | *Author: Jatinder Singh, New Delhi*

The Central Government is empowered under section 145(2) to notify Accounting Standards for any class of assesses or for any class of income. Since the introduction of these provisions by Finance Act, 1995, only two Accounting Standards relating to a) Disclosure of Accounting Policies and b) Disclosure of Prior Period and Extraordinary Items and Changes in Accounting Policies were notified.

In December 2010, the Central Board of Direct Taxes (CBDT) constituted an Accounting Standards Committee which presented certain draft Tax Accounting Standards and also recommended that the accounting standards notified under the Act should be made applicable only to the computation of taxable income and a tax payer should not be required to maintain books of accounts on the basis of AS notified under the Act. Accordingly, an amendment was brought in by Finance Act, 2014, to section 145 stating that the Central Government may notify in the Official Gazette from time to time Income Computation and Disclosure Standards (ICDS) to be followed by any class of assessee or in respect of any class of income. In terms of the

same, the CBDT vide Notification no. 32/2015 dated 31st March 2015 has notified 10 ICDS, which are to be made applicable from 1st April 2015. The same are given as under:
1. ICDS I relating to Accounting Policies
2. ICDS II relating to Valuation of Inventories
3. ICDS III relating to Construction Contracts
4. ICDS IV relating to Revenue Recognition
5. ICDS V relating to Tangible Fixed Assets
6. ICDS VI relating to the effects of changes in foreign exchange rates
7. ICDS VII relating to Government Grants
8. ICDS VIII relating to Securities
9. ICDS IX relating to Borrowing Costs
10. ICDS X relating to Provisions, Contingent Liabilities and Contingent Assets
The salient features of ICDS are as follows:
- These ICDS are applicable to all Assesses i.e. Corporate & Non Corporate Assesses.
- No Net Worth or Turnover Criteria has been prescribed for applicability of these ICDS
- Entity is not required to maintain Books of accounts for ICDS. ICDS is only for computation of income under the head 'Profit and gains of business or profession' or 'Income from other sources'.
- ICDS is meant for normal computation of income not for Minimum Alternate Tax (MAT) Calculation.
- In the case of conflict between the provisions of the Actand ICDS, the provisions of the Act shall prevail to that extent.
Thus, starting from financial year 2015-16 (Assessment Year 2016-17), all assessees will be required to calculate their taxable income under the head 'Profit and gains of business or profession' or 'Income from other sources' as per these ICDS.

Contact: subhasis.banerjee@wts.co.in

IV. Advance Pricing Agreement roll-back rules notified | *Author: Jatinder Singh, New Delhi*

The Central Board of Direct Taxes ("CBDT"), vide Notification No 23/ 2015 dated 14thMarch 2015, has notified rules for Roll back of the already concluded Advance Pricing Agreement ("APA")for the past 4 years immediately preceding the first year of consideration for the APA. As such, the taxpayer can now get clarity with respect to Arm's Length Price ("ALP") of the transfer price of the international transaction for overall 9 financial years (4 past years and 5 future years).

The salient features of the Roll back provisions are as follows:

1. The international transaction proposed to be covered under the rollback is the same as covered in the main APA.

2. It is applicable if income tax return and Form 3CEB is filed within the due dates for the relevant rollback year.

3. It is not applicable if the APA has the effect of reducing the total income or increasing the loss as declared in the return of income of the relevant rollback year.

4. If determination of ALP has been a subject matter of appeal before the ITAT and order has been passed by the ITAT disposing of such appeal at any time before signing of the APA.

5. The applicant has to make an application seeking rollback in Form 3CEDA along with proof of payment of additional fee of Rs.5 million.

6. The main procedural aspects for giving effect to the rollback provisions include (i) filing of modified return of income along with the proof of payment of any additional tax arising out of rollback provision; and (ii) withdrawal of the appeals pending before different appellate authorities by the taxpayers and revenue authorities.

Contact: subhasis.banerjee@wts.co.in

V. Advance Pricing Agreement roll-back rules | *Author: Jatinder Singh, New Delhi*

The Central Board of Direct Taxes ('CBDT') has prescribed the Roll back rules vide Notification No S.O. 758 of 2015 dated 14 March 2015. The Roll back rules provides for having the effect of concluded Advance Pricing Agreement ('APA') for the past successive 4 years immediately preceding the first year of consideration for the APA. As such, the taxpayer can now get clarity with respect to transfer pricing of the international transaction for overall 9 financial years (4 past + 5 future).
The salient features of the Roll back provision are as follows:

1.The international transaction proposed to be covered under the rollback is the same as covered in the main APA.
2.It is applicable if income tax return and Form 3CEB is filed within the due dates.
3.It is not applicable if the APA has the effect of reducing prior year's income and is a subject matter at ITAT and order is passed by ITAT.
4.The applicant has to make an application seeking rollback in Form 3CEDA along with proof of payment of additional fee of Rs 5 lakh.
5.The main procedural aspects for giving effect to the rollback provisions include (i) filing of modified return of income along with the proof of payment of any additional tax arising out of rollback provision; and (ii) withdrawal of the appeals pending before different appellate authorities by the taxpayers and revenue authorities.

Contact: cs.mathur@wts.co.in

I. Foreign Direct Investment in Pharmaceuticals Sector - Clarification | *Author: Ruchi Sanghi, New Delhi*

Recently, the Government of India ("GoI") has made certain changes in the Foreign Direct Investment ('FDI') policy for pharmaceutical sector vide Press Note No. 2 (2015 Series) dated January 6, 2015, issued by the Department of Industrial Policy and Promotion ("DIPP"), Ministry of Commerce & Industry ("MoC&I"), GoI, providing therein a special carve out for medical devices which was earlier given the same treatment as pharmaceutical sector. [The copy of the relevant Press Note has been enclosed as Annexure - I].

The Reserve Bank of India ("RBI") has since amended the subject regulations through Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2015. The Reserve Bank of India ("RBI") has since amended the subject regulations through Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2015.

Thus with effect from January 21, 2015, the position under the revised policy, providing a special carve out for medical devices is as given hereunder:

- FDI upto 100%, under the automatic route is permitted for manufacturing of medical devices.

Medical device means:

a. any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of-

(aa) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;

(ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;

(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;

(ad) supporting or sustaining life;

(ae) disinfection of medical devices;

(af) control of conception,

and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

b. an accessory to such an instrument, apparatus, appliance, material or other article;

c. a device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of in vitro examination of specimens derived from the human body or animals.

d. The definition of medical device as mentioned above would be subject to the amendment in Drugs and Cosmetics Act.

[Source: A.P. (DIR Series) Circular No. 70 dated February 02, 2015]

Contact: cs.mathur@wts.co.in

II. Foreign investment in India by Foreign Portfolio Investors | *Author: Ruchi Sanghi, New Delhi*

As per the existing Foreign Exchange Management Act, 1999 ('FEMA') guidelines, all future investment in government securities by registered Foreign Portfolio Investors ('FPIs') shall be required to be made in government bonds with a minimum residual maturity of three years.

Further, in terms of the announcement made in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015, [The copy of the relevant Sixth Bi-Monthly Monetary Policy Statement has been enclosed as Annexure - II], all future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years.

Accordingly, in terms of A.P. (DIR Series) Circular No. 71 dated February 3, 2015, all future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years. Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.

Further, FPIs also shall not be allowed to make any further investment in liquid and money market mutual fund schemes. There shall be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

RBI has been receiving some enquiries about the applicability of the aforesaid directions. The queries raised and clarifications made vide A. P. (DIR Series) Circular No.73 dated February 6, 2015 thereon are as under:

a. Query: The applicability of the directions to investment by FPIs in commercial papers (CPs).

Clarification: In terms of the aforesaid directions, any fresh investments shall be permitted in any type of debt instrument in India with a minimum residual maturity of three years. Accordingly, FPIs shall not be allowed to make any further investment in CPs.

b. Query: The applicability of these guidelines on debt instruments having maturity of three years and over but with optionality clause of less than three years.

Clarification: FPIs shall not be allowed to make any further investments in debt instruments having minimum initial / residual maturity of three years with optionality clause exercisable within three years.

c. Query: The applicability of these guidelines on amortised debt instruments having average maturity of three years and above.

Clarification: FPIs shall be permitted to invest in amortised debt instruments provided the duration of the instrument is three years and above.

Further, any arrangement that negates any of the above shall not be held to be in conformity with the provisions of A.P. (DIR Series) Circular No. 71 dated February 3, 2015.

In terms of A.P. (DIR Series) Circular No. 72 dated February 5, 2015, FPIs are permitted to invest in government securities, the coupons received on their existing investments in government securities. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities. AD Category – I banks ("AD Banks") shall ensure reporting of such investments as may be prescribed from time to time.

[Source: A.P. (DIR Series) Circular No. 71, 72 & 73 dated February 3, 5 & 6, 2015]

Contact: cs.mathur@wts.co.in

III. Foreign Exchange Management Act, 1999 – Import of Goods into India | *Author: Ruchi Sanghi, New Delhi*

As per the extant RBI guidelines, applications by persons, firms and companies for making payments, exceeding USD 5,000 or its equivalent towards imports into India must be made in Form A-1.

With a view to liberalise and simplify the procedure, RBI has dispensed off the requirement of submitting request in Form A-1 to the AD Banks for making payments towards imports into India. However, AD Bank is required to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transactions before effecting the remittance.

[Source: A.P. (DIR Series) Circular No. 76 dated February 12, 2015]

Contact: cs.mathur@wts.co.in

IV. Foreign Direct Investment – Reporting under FDI Scheme on the e-Biz platform | *Author: Ruchi Sanghi, New Delhi*

With the support of the e-Biz project of the GoI, with a view to promoting the ease of reporting of transactions, RBI vide A.P (DIR Series) Circular No. 77 dated February 12, 2015 (enclosed as Annexure III) has enabled the filing of the following returns with them:

- Advance Remittance Form (ARF) - used by the companies to report the foreign direct investment (FDI) inflow to RBI; and

- FCGPR Form - which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow.

It has been decided that the ARF and FCGPR services of RBI will be operational on the e-Biz platform from February 19, 2015. The user manual is enclosed as Annexure – IV.

The online reporting on the e-Biz platform is an additional facility to the Indian companies to undertake their ARF and FCGPR reporting and the manual system of reporting as prescribed in terms of A.P. (DIR Series) Circular No. 102 dated February 11, 2014 (enclosed as Annexure – V) would continue till further notice.

[Source: A.P. (DIR Series) Circular No. 77 dated February 12, 2015]

V. Liberalised Remittance Scheme ('LRS') – Limit enhanced to USD 250,000

RBI in its Sixth Bi-Monthly Monetary Policy Statement, 2014-15 (enclosed as Annexure – II), has enhanced the limit for foreign exchange remittances under LRS to USD 250,000 per person per year from the existing limit of USD 125,000.

Notification in this regard is still awaited.

[Source: Sixth Bi-Monthly Monetary Policy Statement, 2014-15 by Dr. Raghuram G. Rajan, Governor dated February 3, 2015]

VI. Review of all in cost ceiling - External Commercial Borrowings ("ECBs")

It has been decided by RBI that the all-in-cost ceilings as were specified in A.P. (DIR Series) Circular No. 99 dated March 30, 2012, reproduced herein below, which were earlier applicable till December 31, 2014, will continue to be applicable till March 31, 2015, subject to review thereafter.

Average Maturity Period	All-in-cost over 6 month LIBOR*
Three years and up to five years	350 bps
More than five years	500 bps
* for the respective currency of borrowing or applicable benchmark	

[Source: A.P. (DIR Series) Circular No. 80 dated March 3, 2015]

VII. Review of all in cost ceiling - Trade Credits

It has been decided by RBI that the all-in-cost ceilings as were specified in A.P. (DIR Series) Circular No. 28 dated September 11, 2012, reproduced herein below, which were earlier applicable till December 31, 2014, will continue to be applicable till March 31, 2015, subject to review thereafter.

Maturity Period	All-in-cost over 6 month LIBOR*
Up to one year	350 basis points
More than one year and up to three years	
More than three years and up to five years	
* for the respective currency of credit or applicable benchmark	

[Source: A.P. (DIR Series) Circular No. 81 dated March 3, 2015]

VIII.Acquisition/transfer of immovable property – Prohibition on citizens of certain countries

As per the extant provisions under Foreign Exchange Management (Acquisition and Transfer of immovable properties in India) Regulations, 2000, as amended from time to time, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, without the prior approval of the Reserve Bank of India ("RBI"), is allowed to acquire or transfer immovable property in India, other than lease, not exceeding five years.

RBI, in consultation with Government of India, has now decided to also include citizens of Macau and Hong

Kong, being the two Special Administrative Regions of China, in the list of countries which are prohibited to acquire/transfer immovable property in India.

[Source: A.P. (DIR Series) Circular No. 83 dated March 11, 2015]

Non-Banking Finance Companies

I. Revised Regulatory Framework for Non-Banking Finance Companies ("NBFCs")

In pursuance to the revised regulatory framework for NBFCs issued vide DNBR (PD) CC.No. 002/ 03.10.001/ 2014-15 dated November 10, 2014 (enclosed as Annexure – VI), RBI has now come forth with a list of relevant notifications vide DNBR (PD) CC.No. 024/ 03.10.001/ 2014-15 dated March 27, 2015 (enclosed as Annexure – VII).

[Source: DNBR (PD) CC.No. 024/ 03.10.001/ 2014-15 dated March 27, 2015]

Corporate Law

I. Notification Of Indian Accounting Standards (IND AS) | *Author: Shashank Goel, New Delhi*

Presently it is mandatory for companies to follow the accounting standards as notified under the Companies Accounting Standard Rules 2006. In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013) and sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), now a new set of 39 standards named as Indian Accounting standards (IND AS) have been notified on 16th February 2015 for certain Companies (which are in line with International Financial Reporting Standards (IFRS) to a large extent) which have become mandatory for application as follows:

For accounting periods commencing on or after 1st April 2016in respect of:

(a)companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India (other than SME Exchanges) and having net worth of rupees five hundred crore or more;

(b) companies other than those covered by sub-clause (a)) and having net worth of rupees five hundred crore or more;

(c) Holding, subsidiary, joint venture or associate companies of companies covered by (a) or (b) above.

For the accounting periods beginning on or after 1 st April, 2017, in respect of :

(d) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India (other than SME exchanges) and having net worth of less than rupees five hundred crore;

(e) companies other than those covered above viz unlisted companies having net worth of rupees two hundred and fifty crore or more but less than rupees five hundred crore.

(f) holding, subsidiary, joint venture or associate companies of companies covered under (d) and (e) above.

Companies Other than those covered under (a) to (f) shall continue to follow Accounting Standards prescribed under Companies Accounting standards Rules 2006 as presently applicable.

Further, Companies may voluntarily adopt IND AS for financial statements for accounting periods beginning on or after 1st April, 2015. Once a Company opts to follow IND AS it will be required to follow IND AS for all subsequent financial statements.

[Source: IND AS are available on the following link on the MCA portal- http://www.mca.gov.in/MinistryV2/Stand.html]

Contact: cs.mathur@wts.co.in

II. Note on recent Circulars & Notifications | *Author: Shashank Goel, New Delhi*

Amendment in Companies (Meetings of Board and its Powers) Rules, 2014: The Ministry of Corporate Affairs through issue of notification dated March 18th, 2015 has notified Companies (Meetings of Board and its Powers) Amendment Rules, 2015, which shall come into force on the date of their publication in the Official Gazette (not published as on date), to amend Companies (Meetings of Board and its Powers) Rules, 2014. Through this amendment, the following powers were omitted from the purview of Section 179(3) of the Companies Act, 2013, which requires approval at meetings of Board:-

a. to take note of appointment(s) or removal(s) of one level below the Key Management Personnel

b. to take note of the disclosure of director's interest and shareholding

c. to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company

d. to invite or accept or renew public deposits and related matters

e. to review or change the terms and conditions of public deposit

f. to approve quarterly, half yearly and annual financial statements or financial results as the case may be

Pursuant to the said amendment, the above items may be got approved by circulation. It may, however, be noted that even after the above amendment, items mentioned in clause (ii) above and the annual financial statement mentioned at (vi) above would require to be approved only at meetings of Board, pursuant to the provisions of Section 184(1) and Section 179(3)(g) of the Act, respectively.

Further, pursuant to the provisions of Section 179(3)(k) read with Rule 8 Companies (Meetings of Board and its Powers) Rules, 2014 and Section 117(g) of Companies Act, 2013, accordingly, now the Company need not file Form MGT-14 (form to be filed with ROC for intimating certain resolutions and agreements) for the above mentioned items.

- Amendment in Companies (Share Capital and Debentures) Rules, 2014: The Ministry of Corporate Affairs through issue of notification dated March 18th, 2015 has notified Companies (Share Capital and Debentures) Amendment Rules, 2015, which shall come into force on the date of their publication in the Official Gazette (not published as on date), to amend Companies (Share Capital and Debentures) Rules, 2014.

The brief highlights of the amendment rules are as under:-

(i) Earlier, in companies wherein a Company Secretary (CS) is appointed, such CS shall be deemed to be the authorized signatory for the purpose of signing of share certificates. Now, to provide flexibility to the Board to authorize any individual including a CS for the purpose of signing of share certificates in the capacity of authorised signatory, the said clause has been omitted in the amendment rules.

(ii) Earlier, the listed companies were required to issue duplicate share certificates within fifteen days from the date of submission of complete documents with the company. To provide more time to listed companies, now the amendment rules provide that duplicate share certificates can be issued by listed Companies within forty five days from the date of submission of complete documents.

(iii) For the purposes of issue of Employee stock options, earlier the definition of employee included employee and directors of associate company, which has now been omitted in the amendment rules.

(iv) Earlier, in case of issue of shares on preferential basis, the company also need to comply with the conditions laid down in Section 42 (Offer for subscription of securities on private placement). Now, as per the amendment rules, in case of preferential offer made by a company to one or more existing members only, to dispense with the requirement to issue a private placement offer letter, it has been provided that in such cases the company need not issue private placement offer letter and consequently no filing is required to be done with the Registrar of Companies (ROC). However, the other requirements of Section 42 read with Rule 14 of Companies (Prospectus And Allotment of Securities) Rules, 2014 will continue to apply.

(v) Earlier, security upon issue of secured debentures can only be created by way of charge or mortgage on any specific movable property of the Company, and security in the nature of pledge of movable property was not permitted. Now, as per the amendment rules, the same has been allowed and accordingly, security can also be created in nature of pledge of specific movable property of the Company.

Moreover, in case of any loan taken by a subsidiary company from any bank or financial institution, the charge or mortgage may also be created on the properties or assets of the holding company.

(vi) Earlier, in case of issue of secured debentures, the company was required to execute trust deed in favour of debenture trustees within sixty days of allotment of debentures, now as per the amendment rules the trust deed can be executed within three months of closure of the issue or offer.

(vii) It has been clarified in the amendment rules that Rule 18 of Companies (Share Capital and Debentures) Rules, 2014, pertaining to issue of debentures, shall not apply to amount received by a company against issue of commercial paper or any other similar instrument issued in accordance RBI regulations.

Similarly, the provisions of Rule 18 shall also not apply in case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations issued by RBI, unless otherwise provided in such regulations.

-Amendment in Companies (Acceptance of Deposits) Rules, 2014:- As per the provisions of Section 2(31) of the Companies Act, 2013 read with Rule 2(1)(c)(vii) of Companies (Acceptance of Deposits) Rules, 2014, any amount received on or after 01st April 2014 towards subscription to any securities, including share application money shall not be treated as deposits, provided that, either securities are allotted within sixty days of receipt of share application money or such application money is refunded to the subscriber within fifteen days from the date of completion of sixty days. However nothing was provided in the Companies Act, 2013 regarding share application money received before 01st April 2014 and disclosed in the balance sheet for the financial year ending on or before 31st March 2014, and against which allotment is pending as on 31st March 2015. To deal with these cases, the Ministry of Corporate Affairs has issued a notification dated March 31st 2015 to notify Companies (Acceptance of Deposits) Amendment Rules, 2015, which shall come into force on the date of their publication in the Official Gazette (not published as on date), to amend Companies (Acceptance of Deposits) Rules, 2014. The amendment rules provides that in cases where any amount has been received by a Company before 01st April 2014, towards subscription to any shares, stock, bonds or debentures and disclosed in the balance sheet for the financial year ending on or before 31st March 2014, and against which allotment is pending as on 31st March 2015, the Company shall, on or before 01st June 2015, either refund such subscription moneys or allot shares, stock, bonds or debentures or comply with Companies (Acceptance of Deposits) Rules, 2014.

Other highlights of the amendment rules are as under:

(i) Earlier advance received in connection with consideration for any property, in the course of, or for the purpose of, business of the Company shall not be treated as deposits. Now, it has been provided that advance received only in connection with consideration for an immovable property shall not be treated as deposits.

(ii) Earlier, it was provided that till 31st March 2015every company may invite / accept deposits without entering into deposit insurance contract. Now, the said time period has been extended in amendment rules, and it has been provided that companies may invite / accept deposits without entering into deposit insurance contract till 31st March 2016 or till the availability of deposit insurance product, whichever is earlier.

- Clarification with regard to Section 185 and 186 of Companies Act, 2013:-The Ministry of Corporate Affairs through issue of Circular No. 04/2015 dated 10thMarch, 2015, has clarified that the loans and/or advances made by the Companies to their employees, other than Managing or Whole Time Directors (governed by Section 185) are not governed by the requirements of Section 186 (Loan and Investment by Company). However, this exemption is subject to a condition that such loans/advances are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in case such policy is required to be formulated.

Therefore, now the companies can provide any loan/ advances to its employees without complying with the provisions of section 186 of the Companies Act, 2013, otherwise, the employees may be granted loan under Section 186 instead of Section 185of the Companies Act, 2013. - Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014:- The Ministry of Corporate Affairs vide its Circular dated 30th March, 2015, has clarified that amounts received by Private Companies from their members, directors or their relatives prior to 01st April, 20l4 which were not treated as deposits under Section 58A of the Companies Act, 1956 and rules made thereunder, shall also not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014.However, such private company is required to disclose in the notes to its financial statement prepared for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

However, any renewal or acceptance of fresh deposits by the Company on or after 1st April, 2014 shall be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

- Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014:- The Ministry of Corporate Affairs vide its Circular dated 30th March, 2015, has clarified that amounts received by Private Companies from their members, directors or their relatives prior to 01st April, 20l4 which were not treated as deposits under Section 58A of the Companies Act, 1956 and rules made thereunder, shall also not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014.However, such private company is required to disclose in the notes to its financial statement prepared for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

However, any renewal or acceptance of fresh deposits by the Company on or after 1st April, 2014 shall be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

Contact: cs.mathur@wts.co.in

Important Dates to Remember

Particulars	**Date**
Deposit of TDS for the month of April, 2015	May 7, 2015
Deposit of Service Tax for the month of April, 2015	May 5, 2015 (by e-payment – May 6, 2015)

Disclaimer:

The contents of this document are for information purposes and general guidance only and do not constitute profes sional advice. You should not act upon the information contained in this publication without obtaining specific profes sional advice.

No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication and Mohinder Puri & Company disclaims all responsibility for any loss or damage caused by errors/ omissions whether arising from negligence, accident or any other cause to any person acting or refraining from action as a result of any material in this publication.