

## India

August 2011

# Corporate Update – August 2011\*

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**TAX**

## **India notifies second protocol to Double Taxation Avoidance Agreement with Singapore**

India through Notification number 47/2011 dated 1st September, 2011 (as enclosed) notifies second protocol to Double Taxation Avoidance Agreement (DTAA) between India and Singapore. The protocol allows for exchange of information in tax matters.

The provisions of the Protocol shall be given effect to in the Union of India for taxable periods falling after 1st January, 2008, i.e. Financial Year 2008-09 and subsequent financial years.

The basic changes brought out by the Second Protocol are the following:-

- (1) Earlier, before the amendment introduced by this protocol, the exchange of information in Article 28 of the DTAA covered under the Indian Income-tax, surcharge thereon. Now, this Article has been substituted with wider coverage to include "taxes of every kind".
- (2) The following paras have now been added in the substituted Article 28:-
  - (a) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
  - (b) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."



notification  
47-2011.doc

## Double Taxation Avoidance Agreement between India and Uruguay

India signs Double Taxation Avoidance Agreement (DTAA) with the Oriental Republic of Uruguay for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital on 8th September, 2011. DTAA is yet to be notified for coming into force.

The DTAA provides that business profits will be taxable in the source state if the activities of an enterprise constitute a permanent establishment in that state. Such permanent establishment includes a branch, factory, etc. Profits of a construction, assembly or installation projects will be taxed in the state of source if the project continues in that state for more than six months.

Profits derived by an enterprise from the operation of ships or aircraft in international traffic shall be taxable in the country of residence of the enterprise.

Dividends, interest and royalty income will be taxed both in the country of residence and in the country of source. However, the maximum rate of tax to be charged in the country of source will not exceed 5% in the case of dividends and 10% in the case of interest and royalties.

Capital gains from the sale of shares will be taxable in the country of source and tax credit will be given in the country of residence.

The Agreement further incorporates provisions for effective exchange of information including banking information and assistance in collection of taxes between tax authorities of the two countries in line with internationally accepted standards including anti-abuse provisions to ensure that the benefits of the Agreement are availed of by the genuine residents of the two countries.

The Agreement will provide tax stability to the residents of India and Uruguay and facilitate mutual economic cooperation as well as stimulate the flow of investment, technology and services between India and Uruguay.

## PAN Norms for NRIs, foreigners proposed to be simplified

News item as appeared in Business Standard

### PAN norms for NRIs, foreigners simplified

BS REPORTER  
New Delhi, 9 September

NON-RESIDENTS and foreign citizens looking at investing in India will not have to go through the cumbersome and time-consuming processes for the obtaining permanent account number (PAN) and fulfilling know your customer (KYC) norms.

The finance ministry has simplified the norms for obtaining PAN for them. As identity and address proof for providing PAN for non-Indian citizens, the income tax department will now accept a copy of National, Citizenship and Taxpayer Identification Number.

At present, copies of none of the three documents is considered a proof of identity and the address of the person seeking PAN. The department will also accept these documents if these are attested by an Apostille of the country of residence of the applicant.

Currently, these documents are required to be attested by an officer of Indian Embassy, High Commission or consulate in the country of applicant's residence. Two separate forms will be used for further simplification of the whole exercise. Form 49A is slated to be used by Indian citizens, companies and entities incorporated in India or

unincorporated entities formed in India.

The second form, 49B, will be introduced for the individuals not being a citizen of India, entities incorporated outside India and unincorporated entities formed outside

**THE SECOND FORM, 49B, WILL be introduced for the individuals not being a citizen of India, entities incorporated outside India and unincorporated entities formed outside India**

India. The changes are set to be effective from October 1. A senior finance ministry official said obtaining PAN for non-residents and foreign citizens was "very difficult" at present. "These steps will simplify the whole process and will reduce the hassles associated with investing in the country in a major way," he told *Business Standard*.

## Service Tax

### Electronic filing mandatory

The Ministry of Finance, Central Government vide its notification issued on 25th August, 2011 has with effect from 1st October, 2011 made it mandatory for all service tax payers to file service tax returns electronically. Earlier this requirement was applicable only to an assessee who has paid a total service tax of rupees one million or more (including the amount paid by utilization of CENVAT Credit) in the preceding financial year.

### Exemption to taxable services rendered by Arbitral Tribunal

The Finance Act, 2011 has introduced service tax on services rendered in relation to arbitration by an Arbitral Tribunal to any business entity.

The present Notification exempts such taxable services with effect from the date of its publication in the Official Gazette. Copy of Notification No. 45/2011 is attached herewith.

**Note:-** It may be noted that the taxable services as are covered by sub-clause (zzzzm) of clause (105) of section 65 of the Finance Act, 1994 as amended by the Finance Act, 2011 have been stayed by various High Courts in India, by way of interim stay.



Notification  
45-2011.doc

### Service tax : Concept paper on 'Negative List' of services, issued by the Ministry of Finance, Government of India

The Ministry of Finance, Government of India, last week, has issued a Concept Paper for Public Debate for taxation of services based on a Negative List of Services. The Concept paper has been introduced to solicit public opinion on certain basic changes proposed in the levy of service tax, in preparation for its integration with Goods and Services Tax (GST), proposed to be introduced in 2012.

The concept paper broadly outlines the following proposals:

- (1) Levy of tax on all services excluding those in the 'Negative List';
- (2) What constitutes "Service" to be defined;

The object of the proposal is to simplify the existing Service Tax regulations, which have led to innumerable litigation. The views have been sought from the public by September 30, 2011.

A copy of the concept paper is attached.

As per present situation, the introduction of GST, which was expected to be introduced by April 2012, is likely to be delayed towards end of 2012.



serv tax -negative  
list.pdf

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**FEMA**

## **External Commercial Borrowings - Change of Lender**

In terms of the extant RBI regulations, change of lender for an existing ECB requires RBI approval.

As a measure of simplification, RBI has decided to delegate powers to the AD category-I banks to approve, upon request from borrowers, the change in the lender, subject to the Authorised Dealer ensuring the following conditions:-

- (i) The new lender is a recognized lender as per the extant ECB norms;
- (ii) There is no change in the other terms and conditions of the ECB ; and
- (iii) The ECB is in compliance with the extant guidelines.

However, it may be noted that any change in the lender in case of foreign equity holder and foreign collaborator will continue to be examined and approved by RBI.  
The above changes have come into effect from September 7, 2011.

A copy of AP (DIR Series) Circular No. 11 dated September 7, 2011 issued by RBI is attached.



APD11ES0911.pdf

**India**

**August 2011**

### Important Dates To Remember

	Last Date
E-Filing of Return of Income -by Corporates (not liable for transfer pricing audit) -Other than Corporates liable for tax audit	30th September, 2011 30th September, 2011
Tax Audit	30th September 2011
Filing of Return of Net Wealth	30th September, 2011

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