

**India****August 2010**

## Corporate Update – August 2010<sup>\*</sup>

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### TAX

## Income-Tax

### Direct Tax Code Bill Introduced in Parliament

Direct Tax Code Bill was introduced in the Parliament this week. The proposed Direct Tax Code is intended to substitute the present Indian Income Tax Act and Wealth Tax Act.

Some of the proposals as were made in the discussion paper on Direct Tax Code, which was released last year have been modified, taking into account the representations of various parties. Further some of the proposals as were made in the draft paper, like in respect of introducing substantial changes in the tax rates, both corporate and individuals have also been modified. The present draft is considered to be not as radical as was earlier proposed.

The Draft Bill as introduced in the Parliament is being referred to a Select Committee of Parliament, which will examine the proposals, invite representations and make suggestions. Accordingly, it is proposed that, subject to approval of the Parliament, the relevant Direct Tax Code will become effective only from fiscal year 2012-13 (Assessment Year 2013-14).

The Direct Tax Code as introduced contains 319 Sections and will need to be examined in the following months.

Some of the major proposals are as under:-

1. Corporate Tax Rate, both for domestic and foreign companies to be at par at 30%. No additional cess and surcharge to be applied.
2. In the case of foreign companies 'Branch Profit Tax' to be leviable @ 15%.
3. Residential status of a foreign company will be determined based on place of 'Effective Management'.
4. Dividend Distribution Tax Rate retained @ 15%.
5. Minimum Alternate Tax (MAT) to be applied on Book Profits, is proposed to be increased to 20%. Earlier proposal to levy Minimum Alternate Tax on gross assets basis withdrawn. Companies will be allowed to carry forward tax paid as MAT for 15 years for adjustment, when it becomes liable

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to pay regular corporate tax.

6. New rates of taxation for individuals proposed. The maximum rate of 30% to be applicable at taxable income exceeding Rs. 1 million.
7. Provision for taxing undistributed dividend of foreign corporations that are controlled or owned by Indian companies (CFC Regulations) introduced.
8. Tax would be payable in India, whenever a foreign company shares are transferred, if at least 50% of its assets are situated in India.
9. Provisions relating to tax on capital gains tax more or less retained as presently applicable.
10. Units set up in Special Economic Zones (SEZ) would continue to enjoy profit linked incentives, if the same have been set-up by 31st March 2014.
11. General Anti Avoidance Rules (GAAR) to be introduced.

### **Introduction of GST postponed**

GST which was expected to be introduced from April, 2011, is likely to be postponed, due to consensus not have been reached amongst the States on certain aspects of the legislation to be introduced. It is now likely that GST regulations may be introduced by end of 2011 or beginning of 2012.

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### FEMA

#### **Annual Activity Certificate to be submitted by Branch Office/Liaison Office of foreign entities**

In terms of AP (DIR Series) Circular No. 2A dated 30th December 2009, issued by the Reserve Bank of India (RBI), a Branch Office/Liaison Office was required to submit an Annual Activity Certificate (AAC) on or before 30th April, every year.

Taking into consideration the difficulties experienced by them, RBI has now revised the schedule for submission of the AAC.

According to AP (DIR Series) Circular No. 06 dated 9th April, 2010, as issued by the RBI, the AAC may now be submitted by Branch Office/Liaison Office as under :-

1. On or before 30th September where financial year of the entity ends on 31st March;
2. In case, the financial year ends on a date different from 31st March, the AAC should be submitted within six months of the close of the financial year.
3. The AAC has to be accompanied by the audited Balance Sheet for the relevant year
4. The AAC has to be submitted to the designated AD Category – I Bank, with a copy to the Director General of Income-Tax (International Taxation), New Delhi

A copy of AP (DIR Series) Circular No. 06 dated 9th August 2010 is attached.



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#### **Regulatory framework for Core Investment Companies (CICs)**

The Reserve Bank of India Act, 1934 (RBI Act) requires a Non-banking Financial Company (NBFC) undertaking inter-alia, the business of acquisition of shares, stock, bonds, debentures or other marketable securities to obtain a certificate of registration as an NBFC.

Vide its notification No. RBI/2010-11/168 DNBS (PD) CC.No. 197/03.10.001/2010-11 dated August 12, 2010, RBI has laid down the regulatory framework for Core Investment Companies (CICs).

In terms of this Notification, it has been clarified that CICs with an asset size of Rs. 100 crore or more will be considered as Systemically Important Core Investment Companies ('CICs-ND-SI') and would be required to obtain certificate of registration (COR) from the RBI, even if they have been advised in the past that registration was not required. The CIC's with an asset size of less than Rs.100 crores have been exempted from the requirement of registration with RBI.

A CIC has been defined as an NBFC carrying on the business of acquisition of shares and securities and fulfilling the following conditions:

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- (i) holding not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;
- (ii) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
- iii) it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- iv) it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.

In addition to obtaining the certificate of registration u/s 45I-A of the RBI Act, the CICs- ND-SI would have to comply with the following regulations:

- (i) Capital Requirements: Every CIC-ND-SI shall ensure that at all times it maintains a minimum Capital Ratio whereby its Adjusted Net Worth shall not be less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year.
- (ii) Leverage Ratio: Every CIC-ND-SI shall ensure that its outside liabilities at all times shall not exceed 2.5 times its Adjusted Net Worth as on the date of the last audited balance sheet as at the end of the financial year.
- (iii) All CICs-ND-SI, should apply to the RBI for obtaining the CoR within a period of six months from the date of the Notification.
- (iv) The companies applying for CoR within the stipulated time of six months may continue to carry on the existing business till the disposal of their application by RBI.
- (v) The CIC-ND-SI which fail to apply for CoR within the stipulated period will be regarded as contravening the provisions of Section 45-IA of the Reserve Bank of India Act, 1934.
- (vi) Companies which presently have an asset size of less than Rs 100 crore would be required to apply to RBI for CoR within three months of the date of achieving a balance sheet size of Rs 100 crore.
- (vii) CICs-ND-SI applying for CoR who do not meet the conditions stipulated in above, may approach the Regional Office of the RBI in whose jurisdiction they are registered, with an action plan for compliance with these conditions, in order to avail the exemptions stated below.
- (viii) CICs-ND-SI will be required to submit an annual certificate from their statutory auditors regarding compliance with the above guidelines within one month from the date of finalisation of the balance-sheet.

Exemptions: A CIC-ND-SI which adheres to capital requirements and leverage ratio as specified above, may be exempted from:-

- i) maintaining statutory minimum Net Owned Fund (NoF) and
- ii) compliance with requirements of Non-Banking Financial (Non-Deposit Accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007; including requirements of capital adequacy and exposure norms.

## **External Commercial Borrowings (ECB) Policy – Liberalisation**

Hitherto, entities in the services sectors viz., Hotels, Hospitals and Software have been allowed to avail of External Commercial Borrowing ('ECB') up to USD 100 million per financial year under the Automatic Route, for foreign currency and/or Rupee capital expenditure for permissible end-uses.

In terms of the A.P.(DIR Series) Circular No.08 dated 12th August, 2010, the service sector companies i.e. Hotel, Hospitals and Software, have been permitted to avail of ECB beyond USD 100 million under the Approval route for foreign currency and / or Rupee capital expenditure for permissible end-uses provided that the proceeds are not used for acquisition of land.

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## Important Dates To Remember

	Due Date
Due date of payment of Advance Tax/installment of Income-Tax	15th September, 2010
E-Filing of Return of Income and Fringe Benefits -by Corporates -Other than Corporates liable for tax audit	30th September 2010
Filing of Transfer Pricing Certificate	30th September 2010
Tax Audit	30th September 2010
Filing of Return of Net Wealth	30th September 2010

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