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EDITORIAL VINOD JAIN*

RISING TAX BURDEN – A CAUSE OF CONCERN

The burden of tax on the Indian society is continuously increasing and has become so significant that it has started affecting the common man, societal development and growth of business, commerce, industry and service sector. The taxes are being levied in all the economies of the world. However, not only burden of Indian taxes is significantly higher but also Indian economy is burdened with multiplicity of taxes at the level of Central Government, State Government, the Municipal Corporations, local bodies as well as various regulatory agencies. Hon'ble Chanakya, one of the famous ancient Indian Economists had recommended a maximum level of tax to be limited to 1/6th of the income of an individual. According to him it is criminal on the part of the political system to charge tax higher than 16%, considering all taxes of any kind whatsoever, both direct as well as indirect taxes.

According to one estimate the burden of Indian taxes has gone up even up to 65%. The multiplicity of tax on some transaction has further aggravated the position. For example, the same transaction may attract works contract tax, sales tax, excise, tax deduction at source, right to use goods tax, service tax and the income tax. In addition to the above taxes, the various other State Level taxes including stamp duty, octroi, toll tax, road tax, parking tax, water tax, electricity duty, airport tax, house tax, profession tax are some more examples of increasing burden of taxes. The impact is cascaded by imposition of taxes on tax amount also. This cascading effect makes Indian export as well as domestic operation of the Indian Companies uncompetitive.

In a recent study it was observed that out of the current price of petrol more than 2/3rd is contributed by the various kinds of taxes and levies.

The payment of taxes, by the citizens of the country is made to the Government in lieu of defence, law and order, health, education, infrastructure, roads, lights and other civic facilities besides public order. The Government of India and various State Governments several times compare the taxes being collected by certain developed countries with India. While they wish to collect heavy taxes but they disregard that such heavy taxes cannot be afforded by the developing Indian economy. On the other hand, the government do not compare the kind of facilities being provided by those

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PROSECUTION PROVISIONS UNDER SECTION 277A –NEED FOR STRONG OPPOSITION

The falsification of books of account by certain corporate and other assessees has been a matter of great concern. The profession of chartered accountants has always supported financial discipline, transparency, better tax compliance and corporate governance. The Chartered Accountants in practice as well as those who are employed in industry are committed to the cause of a corruption free economy. The falsification of books of account therefore cannot be tolerated and have been significantly curtailed out of the efforts made by the profession of chartered accountants.

In spite of best efforts made by the profession, the government, tax department and the society, still there are some black-sheep who engage themselves in falsification of books of account. Section 276C of the Income Tax Act have ample provisions to penalize and prosecute a person who willfully attempt in any manner whatsoever to evade taxes including falsification of books of account and other documents.

In the above backdrop, the profession of chartered accountants strongly oppose the introduction of Section 277A in the Income Tax Act, 1961. The provisions propose to prosecute accountants and professional advisors in those cases where falsification of books of account by their clients is alleged,

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CENVAT CREDIT RULES, 2004 – HIGHLIGHTS

Till now the service providers were entitled to credit of service tax paid on the input services consumed by them for rendering the output services. The new Cenvat Credit Rules, 2004 effective from 10.09.2004 extend the benefit of the credit of central excise duty paid on inputs and capital goods to the output service provider. The Highlights of the rules are given here in below:

A. Important Definitions

(a) "input" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol, and motor vehicles, used for providing any output service; and

(iii) motor vehicles for providing output service as specified in sub-clauses (f), (n), (o) and (zzp) of clause (105) of section 65 of the Service Tax Act;

Explanation 1 - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2 - Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

(b) "input service" means any service

(i) received and consumed by a service provider in relation to providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,;

Explanation - Input service includes services used in relation to setting up of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, procurement of inputs, activities relating to management of business, such as accounting, auditing, financing, recruitment and quality control.

(c) "output service" means

any taxable service rendered by the service provider to a customer, client, subscriber, policy holder or any other person, as the case may be;

B. CENVAT Credit

A manufacturer or producer of final products and a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004);

(vi) the Education Cess on excisable goods leviable under section---- read with section--- of the Finance (No.2) Act, 2004;

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi) above;

(viii) the additional duty of excise leviable under Section 157 of the Finance Act, 2003;

(ix) the service tax leviable under section 66 of the Service Tax Act; and

(x) the Education Cess on taxable services leviable under section ----- read with section---of the Finance (No.2) Act, 2004 (---of 2004), paid on the items as prescribed.

C. CENVAT Credit May be utilized for:

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on any output service:

While paying the service tax the credit can be utilized only to the extent available on the last day of the month or the quarter for which the service tax is to be paid.

The credit in respect of the Education Cess can be used for discharging the Cess liability of the output service.

The credit in respect of the capital goods can be taken at any time during the financial year in which the goods are received in the premises. The credit of 50% can be taken in the said financial year. The remaining 50% can be taken in the subsequent financial year. In case the capital goods are to be removed on payment of the credit taken, the full credit is available in the same financial year.

In respect of input services the credit can be taken on or after the date of payment of value of input service and the service tax paid or payable as reflected in the invoice.

D. Refund of CENVAT Credit

Where any inputs or input services are used in providing output services which are exported, the cenvat credit in respect of the inputs or input services so used is allowed to be utilised for payment of service tax on the output services. And if such adjustment is not possible, provider of output service is allowed to take refund of credit subject to the specified limitations and conditions.

CENVAT CREDIT RULES, 2004 – HIGHLIGHTS

E. The mechanism for availing the credit by the service providers providing both taxable and exempted services.

The cenvat credit is not allowed on such quantity of inputs or input services, which are used in exempted services. Exempted services include the non-taxable services.

Where an output service provider is providing services which are taxable and exempted, he should maintain separate record of inputs and input services being consumed in the taxable service and exempted service. No separate record is, however, required to be kept for the input intended to be used as fuel.

If the output service provider opts not to maintain the separate account, then he shall utilize credit only to extent of an amount not exceeding 20% of the amount of service tax payable on taxable service.

F. Documents

The prescribed documents for availing credit of service tax.

1. An invoice, bill or challan, issued by a provider of input service on or after 10.09.2004.

2. An invoice, bill or challan, issued by an input service distributor.

An invoice, bill or challan, issued by the provider of input service should inter alia contain the following details.

i. The name, address and registration number of the provider of the input service.

ii. The name and address of the person receiving taxable service.

iii. Description, classification and value of taxable service provided or to be provided.

iv. The service tax payable thereon

G. Transfer of CENVAT credit

If a manufacturer of the final products/provider of the output services shifts his factory/business to another site or the factory/ business is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory/business to a joint venture with the specific provision for transfer of liabilities of such factory/business, then, the manufacturer/provider of out put services shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory/business.

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RISING TAX BURDEN ....

developed countries who are collecting higher level of taxes.

No democratic system can or should tolerate such a heavy burden of taxes. The politicians in command and the bureaucrats keep on increasing the size of the government as well as the government expenditure. A significant amount of such government expenditure is wasteful, non-plan and is used for purposes, which do not bring any value to the taxpayers.

It would be reasonable for the Government to ensure, in the current scenario to significantly reduce its expenditure, the size of the government and wasteful non-plan expenses. For example, the size of Central Government, Direct and Indirect Tax Department can be reduced by about 2/3rd immediately by transferring these officials and staff to some productive and developmental jobs in villages and smaller towns. This will also reduce corruption and harassment significantly.

The over all maximum taxation burden has to be pegged at a maximum 15% as direct tax and 15% as indirect tax being paid by the citizens. The constitutional framework needs to be brought in place in a manner that the multi level, multi-layer and multiple taxes by various authorities and government can be restricted to 2 or 3 taxes, taking the Central Government, State Governments and local authorities, put together. The Central level as well as state level taxes on Goods and Services should be merged into one tax (GST) and no other indirect tax should be imposed. The GST should be chargeable only on incremental value i.e. value addition at all levels and should be fully vatable.

The thinkers, the economists, the intellectual groups and the social workers should commence a debate on the above aspects so that the Indian political system could be persuaded and pressurized to reduce the burden of taxes on the Indian economic system.

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PROVISIONS U/S 277A ....

whether actually there is any evasion of any taxes or not.

The provisions of Section 277A do not contain adequate checks and balances and can be grossly misused by the Income Tax Department against genuine accountants and professional advisors. There is no justification for initiating criminal proceedings on the basis of allegations of an advise, unless there is an active abetement or participation in the falsification of books of account. There is an apprehension that some of the tax officials may commence criminal prosecution of chartered accountants working in accounts department of an assessee or to whom accounting services have been outsourced as a BPO. These tax officials may commence prosecution u/s 277A against genuine professional advisors on the basis of surmises, conjectures and suppositions. Even in those cases where certain additions have been made or where there are issues of classification of capital or revenue or where the accounting transactions could not be supported or confirmed on investigation, the criminal prosecution u/s 277A could commence. Section 271(1)(c) is one example where prosecutions are launched as a routine even if there are no specific charges of concealment of income.

This is highly objectionable, as in most of the cases the genuine professional chartered accountant or even those working in accounts department may not be aware about the full and clear facts of certain actions taken by the assessee concerned. The income tax department may still allege a willful participation and commence prosecution. In those cases where accountant and advisor concerned have not actively participated in falsification of books of account or abetted such falsification, there can be no cases for being party to the falsification of books of account, just on the basis of professional advice or on the basis of making accounting

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PROVISIONS U/S 277A ....

entries on the advise and instructions of the management.

The Institute of Chartered Accountants of India has clearly provided for that preparation of books of account and financial statements is the basic responsibility of the Board of Directors or the client and the professional chartered accountants cannot take the responsibility for falsification of books of account, if any, undertaken by the client without his active participation. In those cases where the professional chartered accountant is grossly negligent to verify whether the various entries in the books of account are genuine or duly supported, the chartered accountant concerned can be prosecuted under the Chartered Accountants Act, 1949 for professional misconduct. There can be no case to prosecute a chartered accountant u/s 277A whether he is misinformed or grossly negligent. The latest decision of Honorable Supreme Court in case of Doctors, exempting them from criminal prosecution for murder or criminal homicide not amounting to murder, in cases of negligence is a clear example of correct judicial thinking of the responsibility of a professional.

The provisions of Section 277A in the present form are not acceptable and the government should immediately withdraw it and limit prosecution for falsification of books of account only to those who actually attempt to evade taxes in terms of section 276C or who actively participate and abate any attempt of the crime in Section 276C and Section 278. The generic provisions of the Indian Penal Code and Criminal Procedure Code could be utilized in such cases. There is no need for a specific provision like Section 277A. In case such provisions are permitted to be promulgated by the legislature, they may even make an attempt in future to prosecute a lawyer who was consulted by a client, and the client concerned may later on commit a serious crime. Such thinking cannot and should not be supported as professionals have to be dealt with a different stature and cannot be mixed up with those who are actually committing crime.

We hereby call upon the Government to immediately amend the Income Tax Act and withdraw Section 277A or to amend it in a manner the professional advisors or those professionals who are working in accounts department cannot be prosecuted, unless they actually are party to the crime knowingly or willfully, in those cases where the tax is evaded. There is no justification for prosecution except when either the tax is evaded or there is an attempt to evade taxes.

There is a need to fix responsibility and accountability of corrupt or negligent tax officials who make unjust additions or wild assessments without any basis just for their pleasure or to harass an assessee .

It is now time for the Chartered Accountants community to unite and strongly oppose unjust provisions of Section 277A. We need to fight it out.

LATEST IN FINANCE

1 SBI will have 7 profit centres

The State Bank on India (SBI) has created the following seven profit centres within the bank following the recommendations of consultancy firm McKinsey & Co.:

A. Corporate Accounts Group

- Loans to the top 200 firms;
- Loans to mid-cap companies (Rs 25 Crore and above);
- Project finance in infrastructure and other areas.

B. National Banking Group

- Loans to agriculture;
- Loans to SMEs (loans of upto Rs 25 crore) and retail customers;
- Government business.

C. Specialised Cell to sanction Retail loans fast within a week.

2 Indian Bank Launches four loan schemes

Indian bank announced the launch of its four new schemes:

1. The IB-BPO finance is targeted at companies in the BPO business.

2. The IB-Shanti Niketan offers finance to working woman hostels/student hostels, run by registered trusts, NGOs, individuals owning property, registered firms, schools and colleges, HUFs and individuals offering 'paying guest' facility.

Under the Shanti Niketan scheme, the finance provided will be up to Rs 25 lakhs, with the minimum set at Rs. 2 lakhs.

3. IB- Aayushman offers finance for gym, fitness centres and individuals buying such equipment.

4. The IB –Doctor plus targets registered medical practitioners including indian medicine doctors, individuals, partnership, limited companies and trusts whose key promoters are qualified doctors.

Finance will be available under the doctor plus plan up to a maximum of Rs 10 lakh for facilities set up in the rural and semi-urban areas and Rs 15 lakh in the urban areas.

3 Supreme Court Decision

In a recently decided case of ***Monaben Ketanbhai Shah v. State of Gujarat, [2004] 54 SCL 595 (SC),*** it was held that **For purpose of section 141 of Negotiable Instruments Act, a firm comes within ambit of company.**

The Hon'ble Supreme Court decides the following in the matter :

- Whether by virtue of section 141, criminal liability for commission of offence under section 138 by a company is on those who, at time of commission of offence, are incharge of and are responsible to company for conduct of its business - **Held, yes**

- Whether where complainant under section 138 alleging that appellants were partners of firm, whose cheque dishonoured, but filed no document showing that appellants were actively participated in business, complaint filed against appellants would not be maintainable - **Held, yes**

LATEST IN FINANCE

4 'Yes' bank commences operations

'Yes' bank recently announced the commencement of its banking business after the Reserve Bank of India included its name in the second schedule of the Reserve Bank of India Act, 1934. The bank will initially target corporate and wholesale banking customers and offers the entire suits of banking services including corporate banking, financial markets, investment banking and small and medium enterprises as well as treasury services.

5 RBI Hikes CRR to 5%

The Reserve Bank of India has recently stepped in to do its bit towards reining in inflation. In an indirect admission that inflation is not a supply side problem, the monetary authority decided to lower liquidity in the system by raising the cash reserve ratio requirement for banks by half a percentage point to 5%. Significantly, RBI has also said that it will now pay only 3.5% on CRR deposits that banks keep with it, as against 6% till now – a move that could force banks to lend more.

6 Sidbi to launch VC Fund

Small Industries Development Bank of India (Sidbi) will launch a Rs 500 crore venture capital fund with participation from some commercial banks targeted at small and medium enterprises.

7 Port-Based SEZ near Cochin cleared

Approval has been given to Cochin Port Trust for setting up a port-based Special Economic Zone at Vallarpadam/Puthuvypeen near Cochin over an area of about 448 hectares on the basis of proposal received from the Port Trust.

TAXATION

1 Salaried I-T assessees can file e-returns

Salaried income-tax assessees in as many as 60 cities in the country, can now file their returns through the internet. The CBDT has come up with a separate scheme for this purpose. This facility would be available from the assessment year 2004-05 onwards and internet return of income would be processed on a priority basis. This scheme would, however, be available only if the returns are to be filed on or before the due date of returns. Only individuals with permanent account numbers (PAN) and having income under the head 'salaries' but not having any income under the head 'profits and gains of business or profession' can opt for this scheme.

2 Income Tax Decisions

(a) Genuine Foreign Gift cannot be disallowed by Assessing Officer

Where there is no enquiry, but mere disbelief, the addition of foreign gifts cannot stand. For such situation the Department has only to blame itself. Such a situation arose in ***CIT vs. R.S. Sibal (2004) 269 ITR 429 (Del)*** where the addition was of gifts from non-resident solely on the ground that the assessee failed to indicate any relationship natural or man made between the alleged donors and the assessee. The hon'ble court observed that the absence of relationship between the donor and the donee by itself was inadequate because at that time there was no bar against gifts being received from non-relative.

(b) Taxability of amount set apart as a molasses storage fund

The Hon'ble Supreme Court in the matter of ***CIT Vs New Horizon Sugars Pvt. Ltd.*** upheld the decision of various high courts holding uniformly with the amount set apart as required by the molasses control order towards molasses storage reserve fund as allowable expenditure. [269 ITR 397]

(c) Claim for Refund

Hon'ble Punjab and Haryana High Court in the matter of ***Commissioner of Income Tax vs. Daljit Pyarelal & Company*** held that right to refund of tax paid in excess of what is payable in law is a statutory right and cannot be denied merely on the ground that the claim was not made in the prescribed form as long as the claim was made prior to the limitation where refund was admittedly due to the assessee and the Assessing Officer is duty bound to attend the same. [269 ITR 19]

(d) Allowability of expenditure when the business is suspended

Hon'ble Rajasthan High Court in the matter of ***CIT vs. Udaipur Mineral Development Syndicate Limited*** held that while expenditure can be allowed only for business which is carried on during the year, it cannot be disallowed merely because there is no production during the year but the business itself has not been closed.

3 No excise duty on preloaded Softwares

The Supreme Court has held that no central excise duty is payable on software loaded in computers, dismissing the central governments appeals and granting relief to computer manufacturers.

The excise departments had argued that operational software in the hardware became a part of the latter and, therefore, excise duty was chargeable on the total value of the computer.

It maintained that software loaded with licence to the right to use the information contained in it should not be compared with a disc, floppy or CD-ROM available in the market separately.

4 STT not to attract 2% Education Cess

The stock markets heaved a sigh of relief after the bourses clarified that Education Cess of 2% has not been levied on Securities Transaction Tax (STT) come into effect from October 1, 2004.

5 Cabinet nod for National Tax Tribunal

The union cabinet gave its green signal to finance ministry's proposal of setting up a national tax tribunal with 25 benches. The benches will have the jurisdiction of high courts. The proposal is aimed at expediting adjudicating of tax cases and liquidating arrears.

As per the proposal, appeals on substantial question of law emanating from orders passed by income tax appellate tribunal (ITAT) will lie in the national tax tribunal. At presents appeals are heard by respective high courts.

To give effect to the proposal the government is likely to introduce the national tax tribunal bill 2004 in the lok sabha in the next session of parliament.

6 Salaried may come under scrutiny net

After 2 years reprieve, salaried taxpayers may be picked up randomly for tax scrutiny.

SERVICE TAX

7 Changes related to Service Tax

(a) Banking Companies, FIs exempted from Service Tax

Banking Companies and Financial Institutions need not henceforth fork out any service tax on any 'taxable services' provided by them to either Central Government or State Government in relation to collection of any duties or taxes.

This exemption will also be available for a non banking financial company or any other body corporate or commercial concern providing any taxable services for collection of duties or taxes levied by the centre or state Governments.

(b) 1% Service Tax on life policy premium

The Finance Ministry has withdrawn the exemption from the service tax on life insurance services, which was granted to such services in 2002. The service tax is to be levied only to the extent of the risk premium. Option has been given to life insurance policyholders to pay 1% of the gross premium as service tax or 10.2% of the actual risk premium as service tax.

(c) No Service Tax on Cable Operators

The cable network multisystem operators (MSOs) has been exempted from the service tax net.

(d) Interest Tax lowered on delayed payment of service tax

Interest rate on the delayed payment of services tax has been reduced from 15% P.A. to 13% P.A.

(e) Invoices made mandatory for taxable services

The Finance Ministry has made mandatory for the service provider to issue serially numbered invoices, bills or challan for the taxable services provided by them.

(f) Royalty payments do not attract service tax liability

According to a recent decision of the Service Tax (Appellate) Tribunal, Mumbai bench, royalty payments cannot attract a service tax liability. Generally, royalty is paid for the use of technology of knowhow. Hence, service tax cannot be attracted. Tax practitioners are mechanically issuing demand notices to companies for royalty payments made to overseas entities against transfer of technology. Service Tax authorities justify their move by contending that the entities making available such technology or knowhow are providing a taxable service in their capacity as consulting engineers. Litigation is ongoing in respect of demands running into several crores.

Currently, the service tax regulations provide that where the service provider is a non-resident or is from outside India, and does not have any office in India, the person receiving taxable service in India, is liable to pay the service tax.

(g) Government hikes service tax rate under alternate method for air travel agents

The Finance Ministry has hiked the service tax rates for the air travel agents opting to discharge their service tax liability through the alternative method.

In the case of domestic booking service tax rates has been increased from 0.4% to 0.5% and in the case of International booking tax rates has been increased from 0.8% to 1%.

(h) Service Tax only for IPRs under Indian Law

The Finance Ministry has held that Intellectual Property Rights (IPRs) would not be covered under taxable services, which are not covered or prescribed under Indian law.

The Department has made it clear that IPRs covered under the Indian law in force at present alone, are chargeable to service tax.

(i) Exemption to Interest on Overdraft, Cash Credit or Bill Discounting, Cheques

Central Government has exempted the interest charged by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern on overdraft facility, cash credit facility or facilities in relation to discounting of bills, bills of exchange or cheques, from service tax.

This exemption is subject to the condition that the said interest is shown separately in invoice, bill or challan issued for this purpose.

(Source: Notification No. 29/2004 - Service Tax dated 22nd September, 2004)

(j) Voluntary Disclosure

The Finance Minister also declared that no penal action would be taken against those service providers who get themselves registered before 31st October, 2004 and pay their service tax.

The department will accept the declaration regarding value of services and no inconvenient questions will be asked about the declaration.

(Source:PIB Press Release dated 23rd Sept, 2004)

1 Conversion of ECB & Lumpsum Fee/ Royalty into Equity

A. Conversion of ECB into equity

It has been decided to grant General Permission for conversion of ECB into equity subject to the following conditions:

(a) The activity of the company is covered under the Automatic Route for FDI or they had obtained Government approval for foreign equity in the company,

(b) The foreign equity after such conversion of debt into equity is within the sectoral cap, if any,

(c) Pricing of shares is as per SEBI & erstwhile CCI guidelines/ regulations in the case of listed/ unlisted companies as the case may be,

(d) Compliance with the requirements prescribed under any other statute and regulation in force.

It is clarified that the conversion facility is available for all ECBs availed either with the general or specific permission of RBI.

This would also be applicable to ECBs irrespective of whether due for repayment or not, as well as secured/ unsecured loans availed from non-resident collaborators.

However, import payables, deemed as ECBs would not be eligible for conversion into equity/ preference shares.

B. Conversion of Lumpsum fee/ Royalty into equity:

As regards issue of equity/ preference shares by conversion of lumpsum fee or royalty, the details thereof shall be reported in form FC-GPR to the concerned Regional Office of Reserve Bank.

(Source: RBI/2004-05/203 dt. Oct. 1, 2004)

2 Transfer of Shares - Simplification of Procedures

A. Transfer of shares, by way of Sale

At present, transfer of shares, by way of sale, by a person resident in India to a person resident outside India (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign nationals, NRI, Foreign Institutional Investor (FII),) require prior permission of the Government followed by approval from Reserve Bank.

On a review, and with a view to make the environment in India more attractive to foreign investors and also to simplify procedures, Government has decided to dispense with the requirement of obtaining prior approval of the Government (FIPB) in respect of transfer of shares/convertible debentures, by way of sale, from residents to non-residents (including transfer of subscriber's shares) of an Indian company in sectors other than financial service sector (i.e. Banks, NBFCs and Insurance) provided the following conditions are complied with:

The activities of the investee company are under the automatic route under FDI policy (vide Annexure B to Schedule 1 to RBI Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time) and transfer does not attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The non-resident shareholding after the transfer, complies with sectoral limits under FDI policy.

The price at which the transfer takes place is in accordance with the pricing guidelines prescribed by SEBI/RBI.

The onus of complying with the sectoral cap/limits prescribed under FDI policy as well as other guidelines/regulations would rest with the buyer and seller/issuer.

Reserve Bank General Permission for transfer of shares/convertible debentures

At present, the following categories of transfer of shares/convertible debentures by way of sale under private arrangement also require prior permission of Reserve Bank transfer by a person resident in India to person resident outside India transfer by a person resident outside India to a person resident in India

As a measure of further simplification of procedures, it has been decided to grant general permission and do away with the requirement of prior approval of Reserve Bank for transfer of shares and convertible debentures in respect of the aforesaid categories, under above Para, subject to compliance of the terms and conditions and reporting requirements as prescribed. However, the general permission does not include transfer of shares from resident to non-resident in financial service sector.

B. Cases of increase in foreign equity participation by fresh issue of shares as well as conversion of preference shares into equity capital

The Government has also clarified that cases of increase in foreign equity participation by fresh issue of shares as well as conversion of preference shares into equity capital is put under general permission provided such increase falls within the sectoral cap in relevant sectors and are within the automatic route.

(Source: RBI/2004-05/207 dated October 4, 2004)

3 Foreign Investments in India by Lankans

It has now been decided by the Government of India to lift the restriction imposed on investment in Indian companies by Sri Lankan citizens.

Accordingly, persons resident outside India (other than a citizen of Bangladesh or Pakistan) including citizens of Sri Lanka would henceforth be eligible to purchase shares or convertible debentures of an Indian company under Foreign Direct Investment scheme subject to specified terms and conditions.

(Source: RBI/2004-05/176 dt. Sept. 13, 2004)

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CAPITAL MARKET

1 Decision by SAT

Where breach of regulations is not deliberate and non-disclosure of information is due to lack of understanding of law, penalty should not be levied under section 15A of Sebi Act. The securities appellate tribunal (SAT) has set aside order passed by the SEBI imposing a fine of Rs. 4.75 lakh on Reliance Industries Ltd. for not disclosing information on its stake in L&T Ltd., in terms of the provisions as contained under SEBI Takeover Code and has asked the market regulator to refund the penalty amount to the company.

2 FIIs can register in a week

Foreign institutional investors (FIIs) don't have to wait forever to get their proposals cleared by the SEBI anymore. Much to their delight, the market watchdog is clearing all requests in less than a week, and often the intimations of approvals are sent over the telephone.

3 Supreme Court Decisions

(a) In a recently decided case of ***Clariant International Ltd.v. Securities & Exchange Board of India, [2004] 54 SCL 519 (SC),*** it was held that **Regulation 44 of SEBI (Substantial acquisition of Shares and Takeovers) Regulations Protects interests of only such persons who are shareholders of target company as on triggering date.**

The Hon'ble Supreme Court decides the following in the matter :

- Whether object of regulation 44(i) is to protect interest of only such shareholders whose shres have been accepted upon public announcement of offer and who have suffered loss owing to blockage of amount by not being able to sell shares held by them, and, therefore, interest was payable only to such persons who were shareholder of target company as on trigerring date - **Held, yes**

(b) In a recently decided case of **Swedish Match AB.v. Securities & Exchange Board of India, [2004] 54 SCL 549 (SC)** it was held Where transfer of control over target company takes place by reason of acquisition of shares at a price higher than market price, acquirer has a statutory obligation to make public announcement to acquire shares.

4 Unique ID is must for Corporate

Corporate investors, including their promoters and directors are mandated to get their unique identification number (UIN) from National Securities Depository Ltd. (NSDL) by December 31,2004.

UIN is mandatory not just for Corporates dealing in the secondary market but also for those investing in mutual funds, collective investment schemes and in securities that are proposed to be listed in any recognised stock exchange.

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