

MONTHLY COMMUNIQUÉ

APRIL 2010



+ CBDT instruction on mark to market (MTM) losses:

Recently, CBDT in a instruction has advised on the treatment of forex derivative loss claimed by the tax payers on the basis of mark to market (MTM) valuation. In summary, the unrealized forex derivative loss recognized on MTM basis by the tax payers will be added back in the computation of income. The instruction provides that in cases where no sale or settlement has actually taken place and the loss on MTM basis has resulted in reduction of book profits, such a notional loss would be contingent in nature and cannot be allowed to be set off against the taxable income.

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In respect of the treatment of loss from actual transactions in forex-derivatives, the instruction provides that loss arising on actual settlement/conclusion of the contracts is not a notional or marked to market book entry, the treatment will depend upon whether the transaction is speculative or not. In case the transaction is speculative in nature, the loss can be set off only against the profit from speculative transactions. In other cases, the loss is allowed in computation of business income.

The CBDT has clarified that any 'eligible transaction' in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956, that has been carried out in a recognized stock exchange shall not be treated as a speculative transaction. To determine the same the CBDT has instructed the Assessing Officers to examine the financial statements and various other expense heads to know the nature of the expenses. (*Instruction No 3/2010 dated 23rd March 2010*)

+ Corrections in relation to withholding tax compliances:

As mentioned in our earlier communiqué for March 2010, the CBDT has restored the earlier framework (pre 2009) for withholding tax compliances. Further to the same, the CBDT has now also clarified the following:

- The quarterly returns should be accompanied by declaration in Form 27A and not in Form 27B as provided in the earlier notification.
- Further, the earlier notification provided for filing of quarterly returns regarding tax deducted at source in the case of non residents within fourteen days from the end of quarter. This is now amended to provide that quarterly returns are required to be filed on or before 15th July, 15th October, and 15th January in respect of the first three quarters of the financial year and on or before the 15th June following the last quarter of the financial year. (*Notification No 18/2010 /F.No.142/27/2009-SO (TPL) dated 23rd March 2010*)

CUSTOMS

+ Duty Drawback is not payable in cases where the export proceeds are not realized:

It is clarified that Duty Drawback under Section 75 of Customs Act, 1962 would not be payable in cases where export proceeds have not been realized. The circular clarifies that the Drawback scheme is governed by the provisions of the Customs Act, 1962 and the Rules made there under which clearly provide that drawback should be recovered if sale proceeds have not been realized. It further states that action should be taken for recovery of drawback amount in such cases. (*Customs Circular No. 7/2010- Customs dated March 23rd 2010*).

+ Rebate on export of goods by a DTA unit to a unit in SEZ:

It is clarified that the rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ and this does not warrant any change even if Rule 18 does not mention about such supplies. The clarification vide circular No. 29/2006- Cus dated 27.12.2006 was issued after considering all the relevant points and the same is valid. (*Customs Circular No. 06 /2010 dated March 19th 2010*).

FEMA

+ New FDI Policy:

The government on 1st April, 2010 released the consolidated foreign direct investment (FDI) policy, which among other things is aimed at making available all information on FDI policy at one place. The new policy replaced various Press Notes, Press Releases, Clarifications on FDI, with a consolidated policy framework, in a bid to provide a clear understanding of existing regime to the foreign investor. The comprehensive policy document on FDI is a simplified compendium of Press Notes of Department of Industrial Policy and Promotion and various Reserve Bank of India's circulars and regulations contained in FEMA. The new policy will have sunset clause of six months and new FDI policy will be notified thereafter. (*Circular 1 of 2010 dated 1st April 2010*).

