

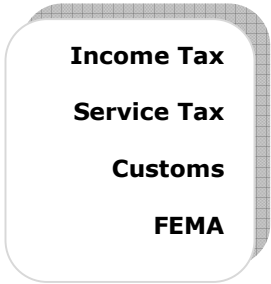
MONTHLY COMMUNIQUÉ

JANUARY 2012



INCOME TAX:

- + Special Provisions for Limited Liability Partnership:** Section 115JC of the Income-tax Act, 1961, introduced with effect from 1st April 2011, provides that a Limited Liability Partnership (LLP) shall be liable to pay Alternate Minimum Tax at the specified rate on adjusted total income. The LLP shall also be required to furnish report from a Chartered Accountant in practice in the prescribed form. Now the Central Board of Direct Tax (CBDT) has in this regard inserted Rule 40BA and has prescribed Form No. 29C (Report under section 115JC) and Annexure A (Details relating to the computation of Adjusted total income and Alternate Minimum tax for the purposes of Section 115JC). (*Notification No.60/2011 dated December 01, 2011*)
- + Effective date of Tax Exchange Information Agreement between India and Cayman Islands:** The Government of India signed an agreement on 21st March 2011 with Government of Cayman Islands for the exchange of information relating to taxes. The effective date of the same would be 8th day of November, 2011. (*Notification No.61/2011 dated December 27, 2011*)
- + Effective date of protocol amending the DTAA between India and Swiss Confederation notified:** The Government has notified that the provisions of the amended protocol shall be applicable in respect of income arising in any fiscal year beginning on or after 1st day of April, 2012. However, provisions relating to exchange of information shall be applicable for the period beginning on or after 1st day of April 2011. The key amendments to the DTAA are:
 - i. Introducing provisions for taxation of profits from the operation of ships in international traffic;
 - ii. Amendment to the definition of 'resident' to include a recognized pension fund or pension scheme;
 - iii. Incorporation of a most-favoured nation clause for a lower rate in respect of dividends, interest, royalties and fees for technical services income streams;
 - iv. Introduction of an anti-abuse provision;
 - v. Enhancement of the provisions relating to exchange of information and assistance in the collection of taxes(*Notification No.62/2011 dated December 27, 2011*)
- + Effective date of protocol amending the DTAA between India and Australia notified:** The existing DTAA agreement between the Government of India and Australia has been amended through the protocol entered into on 16th December 2011. However, the same is yet to be notified. The amendments to the existing DTAA includes:
 - i. Enhancing the threshold for creation of a permanent establishment in certain circumstances and restricting the scope of source country taxation
 - ii. Removing the 'force of attraction rule' in taxation of business profits.
 - iii. Introduction of a new article on non-discrimination in the DTAA.
 - iv. Enhancement of the provisions relating to exchange of information and assistance in the collection of taxes.(*Press Release dated December 16, 2011*)



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CENTRAL EXCISE:

+ Export of goods to Nepal eligible for export benefits: The Central Government has amended the Notifications relating to export of excisable goods to Nepal. Accordingly, the same would be treated as exports and would be reckoned on par with export of goods to other countries except Bhutan. Consequently, the following benefits of export of excisable goods would be applicable to export of goods to Nepal:

- Export of goods without payment of duty under Notification No 42/2001-CE (NT);
- Rebate duty on export of goods under Notification No.19/2004-CE (NT);
- Procurement of excisable goods without payment of duty for use in manufacture or processing of export goods under Notification No. 43/2011-CE (NT) and
- Removal of excisable goods (i.e. intermediate goods) without payment of duty for use in the manufacture or processing of all article by a manufacturer, who is holder of Advance License / Duty Exemption Entitlement Certificate under Notification No. 44/2001-CE.

Hitherto, the above benefits were not available for export of goods to Nepal. Alternatively, a rebate was granted under Notification No. 20/2004-CE (NT). (*Notification No. 24, 25, 26, 27, 28, 29/2011-CE (NT) dated December 05, 2011*)

SERVICE TAX:

+ Taxability in respect of International Private Leased Circuits (IPLC): The CEBC has clarified that the telecommunications services are taxable only when provided by a telegraph authority, a person who has been granted a license, under the Indian Telegraph Act, 1985. In case of IPLC services, the foreign telecom service providers are not granted license by the Indian Telegraph Act, 1985 and accordingly do not constitute a telegraph authority under an Indian law. Therefore, IPLC would remain outside the purview of service tax under the category of telecommunication services. Accordingly, the earlier clarification (Circular dated 15.07.2011) is stand corrected. Hitherto, it was clarified that the activity of receiving IPCL service from abroad is chargeable to service tax under "Business Support Service" at the hands of recipients on reverse charge mechanism as the recipient of services is located in India on reverse charge basis. (*Letter-F.No.137/21/20-ST, Dated December 19, 2011*)

+ Service tax on distributors / sub-distributors of films & exhibitors of movie: The CEBC has clarified as follows:

Type of Arrangement	Exhibition of movie	Service Tax Implication
Principal – to – Principal Basis	Movie exhibited by the theatre owner or by the exhibitor on account of the theatre owner where the the copyrights are temporarily transferred	Service Tax under "Copyright Services" to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be.

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Type of Arrangement	Exhibition of movie	Service Tax Implication
	Movie exhibited by the theatre owner on behalf of distributor or sub-distributor or area distributor or producer etc., where no copyrights are transferred temporarily	Service Tax under Business Support Service / Renting of Immovable Property Service, as the case may be, to be provided by theatre owner or exhibitor.
Arrangement under unincorporated partnership / joint / collaboration basis	Service provided by each of the persons i.e. the 'new entity'/ theater owner or exhibitor / distributor or sub-distributor or area distributor or producer etc, as the case may be, is liable to Service Tax under applicable category	
It is further clarified that the nature of transaction would determines the leviability of service tax and that each case must be looked into on its merits and decision be taken on case to case basis.		

Hitherto, the CEBC had clarified that any arrangement between the theatre owner and the distributor on a revenue sharing basis under a principal-to-principal contract would not tantamount to providing of services by one person to another. Accordingly such arrangements are not liable to service tax. (Circular -148/17/2011 – Service Tax, Dated December 13, 2011)

- + Service Tax refund on services used for export of goods:** The Central Government has introduced two new simplified schemes for refund of service tax paid on services used in export goods. With the introduction of these schemes, the exporter has an option either to opt for electronic refund through ICES system at the scheduled rates or claim refund on the basis of documents. The refund of service tax under the said schemes would be subject to the following:
- No CENVAT credit of service tax paid is claimed on services used for export of the goods
 - The exemption for a Unit or Developer of a Special Economic Zone shall not be applicable

The electronic refund through ICES system is on the same lines of drawback on export of goods. The conditions and procedure for claiming electronic refund are as follows:

- The bank account details and central excise registration / service tax code should be registered with the Customs ICES.
- The claim of option of electronic refund should be declared in the electronic shipping bill or bill of export.
- The chapter / sub-heading number as applicable to the export goods should be declared in the shipping bill or bill of export.
- Minimum Refund should be Rs. 50 for an electronic shipping bill.
- The refund of service tax paid on the specified services is claimed as a percentage of the declared FOB value of the said goods at rates specified in the Schedule.

Eligible refund will be calculated electronically by the ICES system and will be credited directly to the bank account of the exporter. Exporters can track the status of their refund claim through ICEGATE Document Tracking and Touch Screen Enquiry system.

The claiming of refund based on the documents is similar to that of Notification No.17/2009-ST. The conditions and procedure for claiming of refund of service tax based on documents are as follows:

- The service tax has been actually paid on the specified service used for export of goods.
- The registered manufacturer-exporter shall file a claim for refund of service tax paid on the specified service with the Central Excise having jurisdiction over the factory of the manufacturer in Form A-1. The exporter who is not so registered with the central excise should obtain the service tax code and shall file the claim for refund of service tax with the Central Excise in Form A-1;
- The claim for refund shall be filed within one year from the date of export of goods. The date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation.
- Exporters shall be required to declare chapter / subheading number as 9801 in the electronic Shipping Bill
- Service tax refund should not be less than Rs. 500
- The claim of refund shall be certified by the person authorized by the Exporter / Board of Directors of the Company or by a Chartered Accountant, as prescribed.

The above refunds are granted subject to the condition that the sale proceeds in respect of exports are received within the time allowed by the RBI. However, in the event, the same is not received as allowed by RBI, the service tax refund already claimed would be recoverable as service tax erroneously refunded. This notification is effective from January 3, 2012. (*Notification No. 52/2011-ST, Dated December 30t, 2011 and Circular No.149/18/2011-ST, Dated December 16, 2011*)

+ Submission of documents for registration: The CEBC has prescribed documents for obtaining registration under Rule 4(1) of Service Tax Rules, 1994. The prescribed documents are as follows:

- (a) Copy of Permanent Account Number (PAN)
- (b) Proof of Residence
- (c) Constitution of the Applicant
- (d) Power of Attorney in respect of authorized person(s)

It is provided that the above documents shall be submitted within 15 days from the date of e-filing of the registration application. It is also clarified that the registration should be granted within seven days from date of filing of application which is complete in all respects. (*F. No. 137/120/2011 ORDER NO. 2 /2011 – Service Tax dated 13th December 2011*)

FOREIGN TRADE POLICY:

+ Deemed Export benefits when imported capital goods are directly supplied to Project Authority as such:

Deemed exports benefits are provided only when the goods are manufactured and sold in India in terms of paragraph of 8.2 of the Foreign Trade Policy. In this regard, it is clarified that the supply of imported capital goods, as such, like boilers, turbines, generators (BTGs) in the case of non-mega power projects to project authorities do not amount to deemed exports and the deemed export benefits will not be admissible. [Policy Circular No. 50/2009-2014(RE2010), December 28, 2011]

FEMA

+ Relaxation in conditions for converting the import payables into FDI under Government Route:

The erstwhile Circular A.P. (DIR Series) Circular No. 74 dated June 30, 2011, was issued to allow import of capital goods / machineries / equipments to be converted in Foreign Direct Investment. Such conversion was allowed under the Government Route and the same was subject to certain terms and conditions. Two of the conditions mentioned in the Circular No. 74 dated June 30, 2011 have been amended. The comparative analysis of the same is as follows:

Reference	Earlier condition	Revised condition
Para 3(I)(d)	The importer should convert the import payables for capital goods into FDI within 180 days from the date of shipment of goods.	The importer should submit applications complete in all respect for conversions of import payables for capital goods into FDI within 180 days from the date of shipment of goods.
Para 3(II)(d)	The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity.	The applications complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company.

[A. P. (DIR Series) Circular No. 55 dated December 09, 2011]

+ Amendment to the Foreign Direct Investment Scheme in Pharmaceuticals Sector:

Notification No. FEMA 20/2000-RB dated May 3, 2000, permitted FDI up to 100% in Pharmaceutical Sector under automatic route of the FDI Scheme. The extant FDI policy for pharmaceuticals sector has since been reviewed and it has now been decided as under:

- i. FDI, up to 100%, under the automatic route, would continue to be permitted for green field (investment in a new venture) investments in the pharmaceuticals sector.
- ii. FDI, up to 100 per cent, would be permitted for brown field investment (i.e. investments in existing companies), in the pharmaceutical sector under the Government approval route.

[A. P. (DIR Series) Circular No.56 December 09, 2011]

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- + **Delegation of power to compound the contraventions of Foreign Exchange Management Act:** It has been decided to delegate the powers to the specified Regional Offices of the Reserve Bank of India to compound the contraventions of FEMA involving:
 - i. delay in reporting of inward remittance,
 - ii. delay in filing of form FC-GPR after allotment of shares and
 - iii. delay in issue of shares beyond 180 days.

[A.P. (DIR Series) Circular No.57 December 13, 2011]

- + **ECB for Micro Finance Institutions MFIs and specified NGOs under Automatic Route:** Considering the needs of the micro finance sector, the existing External Commercial Borrowings (ECB) policy has been reviewed. It has now been decided that Micro Finance Institutions (MFIs) may be permitted to raise ECB up to USD 10 million or equivalent during a financial year for permitted end-uses under the Automatic Route. However, the same is allowed subject to fulfillment of certain conditions. (A.P. (DIR Series) Circular No. 59, Dated 19.12.2011)



ACCRETIVE SDU CONSULTING PRIVATE LIMITED

+91 (80) 2226 1371 | www.accretiveglobal.com | specialists@accretiveglobal.com

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