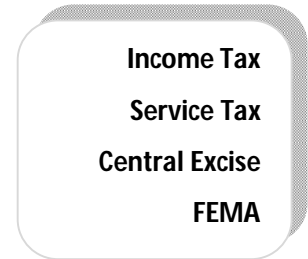


MONTHLY COMMUNIQUÉ

JUNE 2010



INCOME TAX



+ 80IA deduction available for widening of existing roads | Many references were made to the Central Board of Direct Taxes (CBDT) to clarify whether widening of existing roads constitute as new infrastructure facility qualifying for deduction under Section 80IA. The CBDT has now clarified that widening of existing roads by constructing additional lanes as a part of highway project would be regarded as new infrastructure facility for the purpose of aforesaid deduction. It is also clarified that simply relaying of an existing road would not be considered as new infrastructure facility for the above deduction. *(Circular No 4/2010 dated 18th May 2010).*

+ New ITR's notified for the Assessment Year 2010-11 | The income tax returns for the assessment year 2010-11 have been notified. The details are as follows:

Form No.	Heading
ITR-2	For Individual\s and HUFs not having Income from Business or Profession
ITR-3	For Individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship
ITR-4	For individuals and HUFs having income from a proprietary business or profession
ITR-5	For firms, AOPs and BOIs
ITR-6	For Companies other than companies claiming exemption under Section 11
ITR-7	For persons including companies required to furnish return under Section 139(4A) or Section 139(4B) or Section 139(4C) or Section 139(4D)
ITR-V	Where the data of the Return of Income in Forms Saral-II (ITR-1), ITR-2, ITR-3, ITR-4, ITR-5 & ITR-6 transmitted electronically without digital signature

(Notification No 33 dated 11th May 2010)

+ LIC Annuity Plan notified for deduction under Section 80C | The Central Government has notified Jeevan Akshay IV Plan of LIC as annuity plan eligible for deduction under Section 80C, for the Assessment year 2008-09 and subsequent years. The benefit will, however, be limited to the overall ceiling of Rs.1,00,000/- available for deductions under Section 80C, 80CCC and 80CCD *(Notification No 34/2010 dated 19th May 2010).*

+ Tax holiday under Industrial park Scheme, 2008 extended upto 31.03.2011 | The Industrial Park Scheme 2008 encourages developers to create infrastructure facilities for manufacturing units in industrial parks. The Finance Act 2009 had extended the ending date of the scheme from March 31, 2009, to March 31, 2011. Accordingly, the CBDT has made consequent amendment in Rule 18C to provide the undertakings commencing operations on or before 31st March 2011 are eligible for deduction under Section 80IA. *(Notification No 38/2010 dated 21st May 2010).*

+ Amendments with respect to withholding taxes | The Central Board of Direct Taxes has amended the provisions relating to remittance of withholding taxes, filing of quarterly returns and issue of TDS certificates. Please refer our special communiqué of June 2010 for the detailed update. *(Notification No 41/2010 dated 31st May 2010)*

- + **Relief on receipt of gratuity** | The maximum amount of gratuity eligible for tax relief under Section 10(10) is increased to Rs. 10,00,000 from Rs. 3,50,000. The increase in relief is consequent to the amendment to the provisions of Payment of Gratuity Act, 1972 wherein the maximum amount of gratuity payable is increased to Rs. 10,00,000 from Rs. 3,50,000.

SERVICE TAX

- + **Applicability of service tax on laying of cables** | The Board has issued a circular to clarify on disputes with respect to the applicability of service tax on the activities mentioned below.

Activity	Status of taxability
Shifting of overhead cables / wires for any reasons such as widening / renovation of roads	Not taxable
Laying of cables under or alongside roads	Not taxable
Laying of electric cables between grids / sub-stations / transformer stations en route	Not taxable
Installation of transformer / sub-stations undertaken independently	Taxable as Erection, commissioning or installation services
Laying of electric cables up to distribution point of residential or commercial localities / complexes	Not taxable
Laying of electric cables beyond the distribution point of residential or commercial localities/complexes	Taxable as Commercial or Industrial Construction' or 'construction of complex' services, as relevant
Installation of street / traffic / flood lights or electrical and electronic appliances / devices or providing electric connections thereto	Taxable as Erection, commissioning or installation services
Railway electrification, electrification along the railway track	Not taxable

The circular states that the conclusions drawn above are essentially general in nature and would have to be applied in an individual case depending upon its facts and circumstances. (*Circular No. 123/5/2010-TRU dated 24th May 2010*).

CENTRAL EXCISE

- + **Electronic filing of statements / returns** | Electronic filing of returns / statements by manufacturers and dealers made mandatory for the following:

Form	Particulars	Applicable to	Conditions
ER4	Annual financial information statement	Manufacturers	If the central excise duty paid (including through CENVAT credits) exceeds INR 10,00,000 for the previous year
ER2	Monthly return	Export Oriented Units (Manufacturers)	
ER5	Annual Declaration for principal inputs	Manufacturers	
ER6	Monthly Return for principal inputs	Manufacturers	
Form III	Quarterly return	First stage and Second stage dealers	Mandatory in all cases – no conditions specified

FEMA

+ Pricing Guidelines for transfer of equity instruments revised:

The existing pricing guidelines for transfer of shares from resident to non-resident and vice versa have been revised. The details are as follows:

Existing Pricing Guidelines	Revised Pricing Guidelines
Resident to non-resident	
<ul style="list-style-type: none"> ▪ Transfer at ruling market prices in case of listed securities and as per valuation by CA in accordance with CCI Guidelines. ▪ The price arrived should be certified by a CA. 	<ul style="list-style-type: none"> ▪ For listed shares - transfer at a price not less than the price at which a preferential allotment of shares can be made as per SEBI Guidelines, provided the same is determined for such duration as specified in the guidelines preceding the relevant date which is the date of sale or purchase. ▪ Where the shares are not listed, the price should not be less than fair value determined by a SEBI registered category – I Merchant Banker or a chartered accountant as per the discounted free cash flow method. ▪ The price arrived should be certified by SEBI registered category – I Merchant Banker or a chartered accountant.
Non-resident to resident	
<ul style="list-style-type: none"> ▪ Transfer at ruling market prices in case of listed securities through merchant banker registered with SEBI or registered stock broker. In other cases at average price of daily high and low prices for one week preceding the date of application with five percent variation. However, where controlling interest is transferred by foreign collaborator or foreign promoter to resident promoter the price could be higher by 25% of the price above. ▪ Where the shares are not listed or thinly traded and where consideration does not exceed Rs. 20 lacs, at the price agreed between the parties, provided the same is certified by the statutory auditors of the Indian company. In other cases at the option of the seller any of the following <ul style="list-style-type: none"> ▪ Higher of price based on EPS multiple or net asset value multiple ▪ Prevalent market price for small lots as prescribed by RBI ▪ Where shares are not listed, price, lower of valuation by statutory auditors of the company and by chartered accountant/merchant banker registered with SEBI. 	<ul style="list-style-type: none"> ▪ Where the shares are transferred by way of sale, the price should not be more than the minimum price at which the transfer of shares can be made from resident to non resident as above. ▪ Where the shares are not listed, the price should not be less than fair value determined by a SEBI registered category – I Merchant Banker or a chartered accountant as per the discounted free cash flow method. ▪ The price arrived should be certified by SEBI registered category – I Merchant Banker or a chartered accountant.

(Circular No .49/RBI dated 4th May 2010)

- + **Limit for release of foreign exchange for visits abroad revised** | The limit for release of forex in form of currency notes and coins is increased to USD 3,000 from USD 2,000 (or equivalent) to travellers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States. (*Circular 50/RBI dated 4th May 2010*).
- + **Foreign exchange remittances towards royalty permitted without approvals** | Under the existing regulations, prior approval is required for drawing foreign exchange for remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million. This approval process has now been done away with for all remittances under a technical collaboration agreement. (*Circular 52/RBI dated 13th May 2010*).
- + **Liberalisation of external commercial borrowings (ECB) policy for infrastructure companies** | The Infrastructure Finance Companies (IFCs) (*Non Banking Financial Companies are categorised as IFCs by the Reserve Bank*) are now permitted to avail ECBs (including already existing ECBs) for on-lending upto 50% of the owner's funds under the automatic route. Hitherto, this was permitted only under the approval route. This would however be subject to the compliances with the prudential guidelines already in place. ECBs by IFCs above 50 per cent of their owned funds would require the approval of the Reserve Bank. All other aspects of ECB policy remain unchanged. (*Circular 51/RBI dated 11th May 2010*).
- + **Foreign Direct Investment (FDI) in manufacture of cigarettes etc. prohibited** | The existing FDI regulations provides for 100% FDI with prior approval of Foreign Investment Promotion Board (FIPB) in the manufacture of cigars and cigarettes subject to industrial licensing. The Government has decided with immediate effect to prohibit FDI in the manufacture of cigars, cheroots, cigarillos and cigarettes of tobacco or tobacco substitutes. It has decided to include the activity in the list of prohibited for FDI. Accordingly the amendment is made in the Consolidated FDI policy. (*Press Note No 2(2010 series) dated 10th May 2010*).
- + **Remittance towards participation in lottery, money circulation schemes etc, prohibited** | The Reserve Bank of India has clarified that remittance in any form towards participation in lottery schemes or lottery like schemes, by whatever name called, is prohibited under the Foreign Exchange Management Act, 1999. The Reserve Bank has advised the public not to remit or deposit money in such accounts in response to fictitious offers/representations.
The Reserve Bank advice comes in the wake of many residents falling prey to various offers and losing money in the recent past. The Reserve Bank of India has, on several occasions in the past, cautioned the public not to fall prey to fictitious offers / lottery winnings / remittance of cheap funds in foreign currency from abroad by certain foreign entities / individuals, including Indian residents acting as representatives of such entities / individuals. These offers are generally made through letters, e-mails, mobile phones, SMSs, etc. (*Circular 54/RBI dated 26th May 2010*).



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This monthly communiqué summarises select legislative developments on tax and exchange control regulations during the previous month. The views expressed and the information provided in this newsletter are of general nature and is not intended to address the circumstances of any particular individual or entity. Further the above content should neither be regarded as comprehensive nor sufficient for making decisions. Although we endeavour to provide accurate and timely information, there is no assurance or guarantee in this regard. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.

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