Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, MCA, RBI , SEBI and IRDA during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/ notification. You are requested to please submit your feedback and suggestions on the column at **eboard@icai.in**

(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

A. NOTIFICATIONS

1.Rajiv Gandhi Equity Savings Scheme, 2013

In exercise of the powers conferred by section 80CCG(1) of the Income-tax Act, 1961, the Central Government has, through this notification, notified Rajiv Gandhi Equity Savings Scheme, 2013 which shall come into force on the date of its publication in the Official Gazette. The objective of the scheme is to encourage investment of savings of small investors in the domestic market.

This Scheme will apply for claiming deduction in the computation of total income of the assessment year relevant to a previous year beginning on or after the 1.4.2013 on account of investment in eligible securities under section 80CCG(1) of the Act. Further, this scheme includes definitions, eligibility, opening or designating of demat account, procedure for investment under the scheme, period of holding and other conditions, effect of failure to fulfil conditions, duties of depository, furnishing of consolidated statement, form for furnishing reports, savings, assessee to submit records and relevant forms.

As per the savings clause given in this scheme, a new retail investor who has invested in accordance with the Rajiv Gandhi Equity Savings Scheme, 2012 shall continue to be governed by the provisions of that Scheme to the extent it is not in contravention of the provisions of this Scheme and such investor shall also be eligible for the benefit of investment made in accordance with this Scheme for the financial years 2013-14 and 2014-15.

[Notification No. 94/2013 dated 18-12-2013]

2. Application for allotment of PAN-Revised list of documents for proof of identity, address and Date of Birth

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes notified Income tax (19th Amendment) Rules, 2013 which shall come into force on the date of their publication in the official Gazette.

The Central Board of Direct Taxes has, through this notification, substituted existing Rule 114(4) with a new Rule 114 (4) to provide for the following:

1. The existing list of documents to be submitted along with PAN Application has been revised:
   a) Copy of certain documents like Aadhaar Card, CGHS card or ECHS photo card, arm' license, photo id card issued by Central Government or State Government or a PSU, pensioner photo card etc have been included in the list of documents which can be used as a proof of identity of Individuals being citizens of India.
   b) Certain documents like school leaving certificate, matriculation certificate, degree of recognised educational institution, depository account, credit card , water bill etc have been removed from the list of documents which were accepted as a proof of identity of Individuals being citizens of India.
   c) Certain documents such as consumer gas connection card or book or piped gas bill, post office pass book having address of the applicant, passport of the spouse, AADHAR card, allotment letter of accommodation issued by the Central Government or State Government which is not more than three years old, property registration document etc have been included in the list of documents which can be used as a proof of address of Individuals being citizens of India.

d) Certain documents like ration card, rent receipt etc. have been removed from the list of documents which were accepted as a proof of address of Individuals being citizens of India.

2. Proof of Date of Birth along with Proof of Identity and Address is also required to be submitted along with PAN application, in case Individuals being Citizens of India. The documents which would serve as proof of date of birth has been listed thereunder.
3. In case of individuals not being residents of India, copy of other national or citizenship Indentification Number or Taxpayer Identification number duly attested by authorised officials of overseas branches of scheduled banks registered in India would constitute a valid proof of identity.
4. Likewise, in case of LLPs, companies, firms, AOPs etc. formed or registered outside India, a copy of certificate of registration issued in the country where the applicant is located, duly attested by authorised officials of overseas branches of scheduled banks registered in India would constitute a valid proof of identity.

Further, sub-rule (5) has been inserted to provide that the Director-General of Income-tax (Systems) shall specify the procedure and manner for the verification of documents filed along with the application in sub-rule (4) above, the formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing of the application forms for allotment of permanent account number.

Also, in Appendix II Form No. 49A and Form No. 49AA i.e. forms for application for allotment of PAN have been substituted with new Form No. 49A and Form No. 49AA.

[Notification No. 96/2013 dated 23-12-2013]

3. Agreement with Albania for avoidance of double taxation and prevention of fiscal evasion

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has through this notification directed that all the provisions of the agreement between the Government of the Republic of India and the Council of Ministers of Republic of Albania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital shall be given effect to in the Union of India with effect from the date of entry into force of said agreement i.e., the 4th day of December, 2013.

[Notification No. 2/2014, dated 6-1-2014]

4. Double taxation Avoidance Agreement for exchange of information with respect to taxes with Belize

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has through this notification directed that all the provisions of the agreement between the Government of the Republic of India and the Government of Belize for the exchange of information with respect to taxes shall be given effect to in the Union of India with effect from the date of entry into force of said agreement i.e., the 25th day of November, 2013.

[Notification No. 3/2014, dated 7-1-2014]

5. Income-tax (First Amendment) Rules, 2014 – Amendment in Rule 44CA

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has notified Income tax (First Amendment) Rules 2014, which shall come into force on the date of their publication in the Official Gazette.

Rule 44CA provides for the disclosure of information in the application for settlement of cases. The CBDT has, through this notification, amended Rule 44CA of the Income-tax Rules, 1962 to provide the following:

a) The Annexures to Form No. 34B and documents accompanying such annexures are also to be forwarded to the Commissioner while calling for a report from him under section 245D(2B).
b) For sub-rule (2) of Rule 44CA, the following sub-rules have been substituted:

"(2) Where an application has not been declared invalid under section 245D(2C) or an application has been allowed to be further proceeded with under sub-section (2D) of that section, all the material and other information produced by the assessee before the Settlement Commission shall be sent to the Commissioner to enable him to furnish the report under section 245D(3).

(3) Where the proceeding before the Settlement Commission abates, the Commission shall send, all the material and other information produced by the assessee before the Commission and the results of any enquiry held or evidence recorded

in the course of proceedings before it, to the Commissioner."

[Notification No. 5/2014, dated 15-1-2014]

The complete text of the above notifications can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Notifications.aspx

B. CIRCULARS

1. Clarification regarding conflicting interpretations by judicial authorities on applicability of provisions of section 40(a)(ia)

It was brought to the notice of the Central Board of Direct Taxes that there were conflicting interpretations by judicial authorities regarding the applicability of the provisions of section 40(a)(ia) of the Income-tax Act, 1961 with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'. The issue was whether the provisions of section 40(a)(ia) shall apply only to the amounts payable at the end of previous year or it will cover all the amount payable at any time during the year.

The Board has, through this circular, clarified that the provisions of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. According to the circular, the statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term "payable" would include "amounts which are paid during the previous year".

The Circular also mentions that where any High Court decides an issue contrary to the 'Departmental View', the 'Departmental View' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the CTC. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

[Circular No. 10/DV/2013, dated 16-12-2013]

2. Clarification regarding TDS under Chapter XVII-B on service tax component comprised in payments made to residents

In exercise of powers conferred under section 119 of the Act, the Central Board of Direct Taxes has through this circular clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.

[Circular No. 1/2014, dated 13-1-2014]

The complete text of the above mentioned circulars can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

C. PRESS RELEASE

1. Agreement with Macedonia for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income

As per this Press release an agreement for avoidance of double taxation has been signed between the Republic of India and the Republic of Macedonia on 17.12.2013. Once the DTAA enters into force it will provide relief to taxpayers from double taxation and thereby stimulate the flow of capital, technology and personnel between both the countries and will further strengthen the economic relationship between the two countries. The salient features of the agreement are given in the text of the Press release.

[Press Release, dated 17-12-2013]

2. FAQ's on Inflation Indexed National Savings Securities – Cumulative(IINSS-C)

The Government of India has, through Notification No. F 4(16)-W&M/2012, dated 19.12.2013, issued Inflation Indexed National Savings Securities – Cumulative, 2013 (i.e. Bonds) from 23rd December to 31st December, 2013. The interest on the will be taxable under the Income-tax Act, 1961 as applicable according to the relevant tax status of the Bonds holder. In this regard, the Board has, through this press release, issued various FAQ's on issue of the said bonds. As per the FAQ's, TDS under section 193 shall not be deducted from any interest payable on IINSS-C, until and unless notified by the Government of India.

[Press Release, dated 18-12-2013]

The complete text of the above Press Releases can be downloaded from the link below: http://www.incometaxindia.gov.in/home.asp

D. INSTRUCTIONS

1. Issue of Intimation under section 143(1) of Income-tax Act, 1961 beyond time in case of valid return with refund claim

In exercise of the powers vested in section 119(2)(a) of the Income-tax Act, 1961, the CBDT has relaxed the time frame prescribed under second proviso to section 143(1) of the Act in those cases where a valid return of income was filed as per the provisions of section 139/142(1) of the Act with refund claim, but the same remained pending beyond the prescribed date due to reasons not attributable to the assessee. In such cases, CBDT has directed that such returns shall be processed and intimation of processing of such returns shall be sent to the assessee in accordance with the section 143 of the Act notwithstanding the time limit prescribed in second proviso to sub-section (1) of that section.

[Instruction No. 18/2013, dated 17-12-2013]

2. Adherence to time line prescribed by Citizen's Charter

Vide this Instruction, the Assessing Officers have been directed to adhere to the timeline of One month, prescribed as per the Citizens Charter in case of issue of certificate of no deduction of tax or deduction of tax at a lower rate under section 197 of the Act.

[Instruction No.1/2014 dated 15-1-2014]

The complete text of the above Instructions can be downloaded from the link below: http://www.incometaxindia.gov.in/home.asp

(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

A. SERVICE TAX

1. Clarification on Levy of service tax on services provided by RWA

Notification No. 25/2012- ST dated 20.06.2012 clause no. 28(c) provides for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

CBEC has issued a Circular No. 175/01/2014- ST dated 10.1.2014, which has clarified certain doubts regarding the scope of the present exemption extended to RWAs under the negative list approach as below:

Doubt-1

(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service

for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable?

(ii) If the contribution of a member/s of a RWA exceeds five thousand rupees per month, how should the service tax liability be calculated?

Clarification

Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members. However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members.

Doubt-2

(i) Is threshold exemption under notification No. 33/2012-ST available to RWA?

(ii) Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?

Clarification

Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding 10 lacs rupees in any financial year is exempted from service tax. As per the definition of 'aggregate value' provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax.

Doubt-3

If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST ?

Clarification

In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.

Doubt-4

Is CENVAT credit available to RWA for payment of service tax?

Clarification

RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

[Circular No. 175 /01 /2014 - ST dated 10.1.2014]

2. Exemption for Sponsorship of Sporting events extended even if participating team represent the Country

Services by way of sponsorship of sporting events organised by a national sports federation, or its affiliated federations were exempt if participating teams or individuals represent any district, state or zone. The aforesaid exemption has been extended even if participating teams or individuals represent the Country.

[Notification No. 1/2014 ST dated 10.1.2014]

B. CENVET CREDIT RULES

1. Amendment in definition of "first stage dealer" as defined under Rule 2(ij) and Rule 9 of the CCR, 2004

CBEC has amended rule 2(ij) to make an importer issuing Cenvatable invoice as a "First Stage Dealer". Registration for such first stage dealers has been made mandatory by amending rule 9 of the Central Excise Rules, 2002.

[Notification No. 17 and 18 /2013-CX., (N.T.), dated 31.12.2013]

2. Amendment to Rule 3

Rule 3, sub rule 5(c) of CCR, provides that where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on inputs used in the manufacture or production of said goods shall be reversed.

The aforesaid provision has been amended. Now, even the CENVAT credit on input services used in or in relation to the manufacture or production of said remitted goods is required to be reversed.

Further, an explanation has been inserted after sub-rule 5(C) which clarifies that the amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting

the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Also, the earlier explanation which provided for the recovery of cenvat credit taken by the manufacturer of goods or the provider of output services under sub-rules (5), (5A) and (5B) in the manner as provided in rule 14, has been amended. Now if the manufacturer of goods or the provider of output services fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C) , it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.

[Notification 1/2014-CX dated 08.01.2014]

C. EXCISE

1. Availability of excise duty exemption to the units which have already availed of exemption under New Industrial Policy for another 10 years by way of 2nd substantial expansion in the State of Jammu & Kashmir

In pursuance of the New Industrial Policy and other concessions for the State of J&K announced by the Department of Industrial Policy and Promotion (DIPP) in June 2002, it has been clarified that an existing unit, which has availed of excise duty exemption under notification No.56/2002-CE & 57/2002-CE, both dated 14.11.2002 by way of substantial expansion for a period of 10 years from the date of commencement of commercial production, can avail of excise duty exemption under notification No.1/2010-CE, dated 06.02.2010 again by way of second substantial expansion so long as it satisfies the conditions stipulated under notification No.1/2010-CE, dated 06.02.2010.

It has also been clarified that *Notification No.1/2010-CE dated 06.02.2010* does not specifically provide any cut-off date (sunset clause) for setting up of new units or for units undertaking substantial expansion.

[Circular No. 977/01/2014-CX, dated 03.01.2014]

2. Non Levy of the Education Cess and the Secondary and Higher Education Cess on other cesses

It is clarified that the Education Cess and the Secondary and Higher Education Cess are not to be calculated on cesses which are levied under Acts administered by Department/Ministries other than Ministry of Finance

(Department of Revenue) but are only collected by the Department of Revenue in terms of those Acts.

[Circular No. 978/2/2014-CX, dated 7.1.2014]

3. Clarification on implementation of decision of Hon'ble Supreme Court in case of goods sold at a price below the Cost

In the case of *M/s. Fiat India Ltd. (2012-TIOL-58-SC-CX) or 2012 (283) E.L.T 161 (S.C.)* the Hon'ble SC held that in case the goods were sold at a price substantially lower than the cost of the manufacture to achieve market penetration, the transaction value declared under section 4 may be rejected.

CBEC has issued a *Circular No. 979/03/2014-CX dated 15.01.2014*, to clarify the following:

Whether transaction value which is below manufacturing cost and profit can be rejected in all the cases?

It has been clarified that, transaction value cannot be rejected merely on sale of goods below the manufacturing cost and profit. In the paragraph 50 of the aforesaid judgment Hon'ble SC held that a manufacture may sell goods at a price lower than the cost of manufacture and profit and yet declared value can be considered as transaction value:

- When the company want to switch over its business
- Where a manufacturer has goods which could not be sold within a reasonable time

The Hon'ble Court has further held that aforesaid examples are not exhaustive.

Identification of Cases where ratio of the judgment would apply?

It has been clarified that due care may be taken at the level of the Commissioner to see whether the case at hand is similar to the facts and circumstances of the FIAT case. Only where a decision to investigate a case has been taken at the level of the Commissioner and it is considered necessary in the interest of investigation, steps such as ordering Cost Audit of the Unit or summoning of the Costing data should be undertaken.

It has been further clarified that calculation of manufacturing cost may be carried out using CAS-4 standards duly certified by a Chartered or Cost Accountant.

Period of Application of aforesaid judgment:

It has been clarified that periods in respect of matters pertaining prior to the date of the judgment ie. 29.08.2012, the normal period of limitation will apply.

However, for periods after the date of the judgment, i.e. 29.08.2012 onwards, if there is a sale in the circumstances similar to the case of M/s FIAT, then extended period of limitation may apply considering willful misstatement of the assessable value.

[Circular No. 979/03/2014-CX dated 15.01.2014]

D. CUSTOMS

1. Clarification on exemption from Special Additional duty of Customs (SAD) on goods cleared from SEZ / FTWZ into the DTA

Notification No. 45/2005-Customs, dated 16.05.2005 exempts goods cleared from SEZ/FTWZ and brought into DTA from levy of SAD if goods sold in DTA, are **NOT** exempted from VAT/sales tax.

It is clarified that the benefit of SAD exemption on goods cleared from the SEZ/FTWZ unit into DTA unit on stock transfer basis for self-consumption i.e. otherwise than for sale as such, is not available under notification No.45/2005-Customs, dated 16.05.2005. In such cases, SAD would be leviable.

[Circular No. 44/2013-Cus, dated 30.12.2013]

The text of the above notifications/circular is available at www.cbec.gov.in

(Matter on FEMA has been contributed by CA. Manoj Shah and CA. Hinesh Doshi)

1. Amendment to the policy on issue of shares by unlisted Indian Companies under FCCB/ADR/GDR pursuant to the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism)(Amendment) Scheme, 2013

Press Note No. 7 (2013 Series) dated December 3, 2013 issued by the Department of Industrial Policy & Promotion

Consequent to issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) (Amendment) Scheme, 2013 vide notification no. G.S.R. 684(E) dated October 11, 2013 issued by the Government of India, the paragraph 3.3.4(iii) of the Consolidated

FDI Policy effective from April 5, 2013 is replaced as under:

"Unlisted companies shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period of two years subject to the following conditions:

(a) Unlisted Indian companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;

(b) The companies shall file a copy of the return which they submit to the proposed exchange/ regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;

(c) While raising resources abroad, the listing company shall be fully compliant with the FDI policy in force;

(d) The capital raised abroad may be utilised for retiring outstanding overseas debt or for operations abroad including for acquisitions;

(e) In case the funds raised are not utilised abroad as stipulated at (d) above, such companies shall remit the money back to India within 15 days and such money shall be parked only with AD Category Banks recognised by RBI and may be used domestically."

The above modifications shall come into immediate effect.

2. External Commercial Borrowing (ECB) Policy

A. Borrowing and Lending in Rupees - Investments by persons resident outside India in tax free, secured, redeemable, non - convertible bonds

A.P. (DIR Series) Circular No. 81 dated December 24, 2013 and Notification No. FEMA 287/2013-RB dated September 17, 2013

RBI has permitted resident entities/companies in India, authorised by the Government of India, to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India to use such borrowed funds for the following purposes:

(a) For on lending/re-lending to the infrastructure sector; and

(b) For keeping in fixed deposits with banks in India pending utilisation by them for permissible end-uses.

Consequently, the RBI has issued Notification No. FEMA.287/2013-RB dated September 17, 2013 to amend the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 [Notification No. FEMA 4/2000-RB dated May 3, 2000] to give effect to the above amendment.

B. Liberalisation of definition of Infrastructure Sector

A.P. (DIR Series) Circular No. 85 dated January 6, 2014

The definition of infrastructure sector for the purpose of raising ECB was expanded vide Notification No. FEMA.281/2013-RB dated July 19, 2013 effective from September 12, 2013 A. P. (DIR Series) Circular No. 48 dated September 18, 2013 taking into account the Harmonised Master List of Infrastructure sub-sectors and Institutional Mechanism for its updation approved by Government of India vide Notification F.No.13/06/2009-INF dated March 27, 2012.

RBI has now decided that, for the purpose of ECB, 'Maintenance, Repairs and Overhaul' (MRO) shall also be treated as a part of airport infrastructure. Accordingly, MRO, as distinct from the related services which are other than infrastructure, will be considered as part of the sub-sector of Airport in the Transport Sector of Infrastructure.

3. Clarifications on Import of Gold by Nominated Banks /Agencies/Entities

A.P. (DIR Series) Circular No. 82 dated December 31, 2013

Considering the representations received related to import of gold dore, and in consultation with the GOI, RBI has issued the following clarifications which shall come into force with immediate effect:

(a) Refineries are allowed to import dore up to 15% of their gross average viable quantity based on their license entitlement in the first two months for making this available to the exporters on First in First out (FIFO) basis. Subsequent to this, the quantum of gold dore to be imported should be determined lot-wise on the basis of export performance.

(b) Before the next import, not more than 80% shall be allowed to be sold domestically.

(c) The dore so imported shall be refined and shall be released based on FIFO basis following 20:80 principle. This would be monitored by CBEC as earlier.

(d) The imports, thereafter, shall be allowed only up to 5 times the quantum for which proof of export has been submitted. This shall be on accrual basis.

4. Overseas Direct Investments – Rollover of Guarantees

A.P. (DIR Series) Circular No. 83 January 3, 2014

RBI has decided not to treat/reckon the renewal/rollover of an existing/original guarantee, which is a part of the total financial commitment of the Indian party in terms of Regulation 6 of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004, as a fresh financial commitment, provided that:

(a) the existing/original guarantee was issued in terms of the then extant/prevailing FEMA guidelines.

(b) there is no change in the end use of the guarantee, i.e. the facilities availed by the JV/WOS/Step Down Subsidiary;

(c) there is no change in any of the terms & conditions, including the amount of the guarantee except the validity period;

(d) the reporting of the rolled over guarantee would be done as a fresh financial commitment in Part II of Form ODI, as hitherto; and

(e) if the Indian party is under investigation by any investigation/enforcement agency or regulatory body, the concerned agency/body shall be kept informed about the same.

In case, however, the above conditions are not met, the Indian party shall obtain prior approval of RBI for rollover/renewal of the existing guarantee through the designated AD bank.

5. Foreign Direct Investment (FDI)

A. Clarifications on Issue of Non convertible/ redeemable bonus preference shares or debentures

Notification No. FEMA.291/2013-RB dated October 4, 2013 and A.P. (DIR Series) Circular No. 84 dated January 6, 2014

Till now, the RBI has been granting permission on a case to case basis for issue of non-convertible/ redeemable bonus preference shares or debentures to

non-resident shareholders from the general reserve under a Scheme of Arrangement by a Court, under the provisions of the Companies Act.

With a view to rationalise and simplify the procedures, RBI has decided that the Indian company may issue non-convertible redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities. The issue of preference shares (excluding non-convertible/redeemable preference shares) and convertible debentures (excluding optionally convertible/partially convertible debentures) under the FDI scheme would continue to be subject to A.P. (DIR Series) Circular Nos.73 and 74 dated June 8, 2007.

RBI has amended the Regulation 7 of Notification No. FEMA 20/2000–RB vide Notification No. FEMA 291/2013-RB dated October 4, 2013 effective from December 31, 2013.

B. Pricing Guidelines for FDI instruments with optionality clauses

(i) Notification No. FEMA. 294/2013-RB dated November 12, 2013

(ii) Press release No. 2013-2014/1388 dated January 9, 2014

(iii) A.P. (DIR Series) Circular No. 86 dated January 9, 2014

As per the extant regulations, only equity shares or convertible preference shares/debentures without optionality clause are eligible instruments to be issued to persons resident outside India under the FDI policy.

On a review, RBI has decided that optionality clauses (but without any option/right to exit at an assured price) may henceforth be allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the FDI Scheme. The optionality clause shall oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any

assured return subject to the following conditions:

(a) Such instruments shall be locked-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher (e.g. defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period shall be effective from the date of allotment of such shares or convertible debentures or as prescribed for defence and construction development sectors, etc. in Annex. B to Schedule 1 of Notification No. FEMA. 20 as amended from time to time;

(b) After the lock-in period, as applicable above, the non-resident investor exercising option/ right shall be eligible to exit without any assured return, as under:

  (i) In case of a listed company, the non-resident investor shall be eligible to exit at the market price prevailing at the recognised stock exchanges;

  (ii) In case of unlisted company, the non-resident investor shall be eligible to exit from the investment in equity shares of the investee company at a price not exceeding that arrived at on the basis of Return on Equity (RoE) as per the latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy/FEMA Regulations. For the above purpose, RoE shall mean Profit After Tax/Net Worth; Net Worth would include all free reserves and paid up capital.

  (iii) Investments in Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPS) of an investee company may be transferred at a price worked out as per any internationally accepted pricing methodology at the time of exit duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement, as applicable.

All existing contracts will have to comply with the above conditions to qualify as FDI compliant.

Consequently, RBI has amended the Regulation 5 and Regulation 9 of Notification No. FEMA 20/2000–RB vide Notification No. FEMA 294/2013-RB dated November 12, 2013 effective from December 30, 2013.

C. Invitation for comments on 7th edition of Consolidated FDI Policy Circular

As the next edition of the Consolidated FDI Policy Circular i.e. 'Circular 1 of 2014' is scheduled to be issued on 31.3.2014 which will be effective from 01.04.2014, The Department of Industrial Policy & Promotion (DIPP) has invited comments/ suggestions on 'Circular 1 of 2013' invited from stakeholders by 17.01.2014 for consideration. The comments may be sent to the Director, DIPP and/or emailed at circular2014.fdi@nic.in.

D. Review of the existing policy on FDI in the Pharmaceuticals Sector

Press Note No. 1 (2014 Series) dated January 8, 2014 issued by the Department of Industrial Policy & Promotion

The Government of India (GOI) has reviewed the position of FDI in the pharmaceuticals sector and has decided that the existing policy would continue with the condition that 'non- compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.

The above decision shall take immediate effect.

6. Liberalisation of regulations relating to Resident Bank accounts maintained by residents in India with relative Non resident Indians (NRIs) as Joint holders

A.P. (DIR Series) Circular No. 87 dated January 9, 2014

Presently, individuals resident in India are permitted to include RBI close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as a joint holder(s) in their resident savings bank accounts on "former or survivor" basis. Such NRI close relatives are, however, not eligible to operate the account during the life time of the resident account holder in terms of said instructions.

In view of the representations received by RBI, RBI has allowed to include NRI close relative (relatives as defined in Section 6 of the Companies Act, 1956) as joint holder with the resident account holder on "Either or Survivor" basis subject to certain conditions.

While extending this facility the AD bank should satisfy itself about the actual need for such a facility and also obtain the declaration duly signed by the non-resident account holder in the prescribed format.

For detailed conditions, please refer circular available on RBI website at: http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP87090114FS.pdf

7. Clarifications on Provisions under section 6 (4) of Foreign Exchange Management Act, (FEMA) 1999

A.P. (DIR Series) Circular No. 90 dated January 9, 2014

In terms of Section 6 (4) of FEMA, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

In this regard, RBI has clarified that the following transactions shall be covered under section 6(4) of FEMA, 1999:

(a) Foreign currency accounts opened and maintained by such a person when he was resident outside India;

(b) Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;

(c) Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India;

(d) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of RBI, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

(Matter on Corporate Laws has been contributed by corporatelaws.taxmann.com)

MCA (www.mca.gov.in)

1. MCA acts stringent towards certifying professionals for defective filing of e-forms

MCA vide. Letter D.O. NO.IC/CIR.14/PLS/MCA21/2013, dated 19-12-2013 has taken serious view of pendency of e-forms in various MCA offices in South East Region and issued instructions to this Directorate to take steps to impress upon the certifying professionals (CA/CS/CMA) to

completely avoid defective filings so as to facilitate early disposal of e-forms. Directorate has noted that complete attachments are not being made or several attachments to e-forms are found to be not legible and some times contain cut & paste signatures instead of clear scanned image of original documents. Further, Certifying professionals are not attaching search report (s) to e-form 1A causing non-compliance of Name Availability Guidelines, Like wise, there are many such defective/wrong filings which were certified by the professionals causing high levels of pendency in MCA 21 portal.

Ministry urged to communicate the notice to all members impressing upon them the seriousness of issue and adhere to strict compliance.

2. MCA Exempts contribution to Electoral Trust from Separate disclosures under Companies Act, 2013

MCA has issued Circular No. 19/2013 dated 10.12.2013 to clarify regarding the disclosures to be made by company for any amount or amounts contributed by it to any political parties under section 182(3) of the Companies Act, 2013 and section (24AA) of the Income-tax Act, 1961 relating to scheme for 'Electoral Trust Companies'

It is clarified that companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013; that companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 182(3) of the Companies Act, 2013; and that Electoral Trust Companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.

3. Shares held in fiduciary capacity to be excluded in determining holding subsidiary relationship under Companies Act, 2013

Ministry has issued General Circular No 20/2013 dated 27.12.2013 to clarify upon section 2(87) of the Companies Act, 2013 which defines "subsidiary company" or "subsidiary".

It is clarified that shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

SEBI (www.sebi.gov.in)

1. e-filing of quarterly statements by Securitisation and reconstruction companies.

RBI has issued Circular No DNBS (PD) CC. NO. 34/SCRC/26.03.001/ 2013-2014 dated 31.12.2013 to streamline reporting system and to improve the method of collecting data from Securitisation Companies/ Reconstruction Companies (SC/RCs) registered with Bank, it has been decided to facilitate filing of quarterly statements SCRC 1 & SCRC 2 online. The Bank has hosted the combined format of the Returns viz., SCRC 1 and SCRC 2 on the Banks website viz https://cosmos.rbi.org.in

Securitisation Companies/Reconstruction Companies (SC/RCs) are advised that statements for the quarter ending March 31, 2014 and thereafter be filed online. Companies are also allowed an option to submit the statements for quarter ending December 2013 either on line or by post.

2. Know Your Client Requirements

SEBI vide Circular No. Mirsd/13/2013 dated 26.12.2013 has simplified the account opening process for investors with the centralised KRA system in place, the client has to undertake the KYC process only once; he need not repeat KYC process again when he approaches different intermediaries in securities markets. It has now been decided in consultation with various market participants to shift certain information in Section C of Part I to Part II of the AOF (for both individuals and non-individuals). Information as contained in revised Part I of AOF shall only be required to be captured in the systems of KRAs from the date of this circular. The modifications would assist in avoiding repeated modifications in the KRA system as information provided by the client in Section C changes over a period of time and will facilitate in making the KYC uniform for the entire financial sector.

3. SEBI board meeting

SEBI issued Press Release No. 125/2013, dated 24.12.2013 about the decision taken by SEBI Board in its meeting. SEBI Board in its meeting approved a proposal to amend SEBI (Collective Investment Schemes) Regulations, 1999, providing framework for regulation of such deemed Collective Investment

and additional requirements for continuous compliance by registered Collective Investment Scheme. The Board approved amendment to SEBI (IPEF) Regulations, 2009 enabling utilisation of such amounts primarily for restitution to investors and in case of failure of identification of investors, for the credit of amounts disgorged under the SEBI Act 1992, the Securities Contracts (Regulation) Act 1956 or the Depositories Act 1996 to the Investor Protection and Education Fund of SEBI. SEBI has allowed certain class of entities to file shelf Prospectus for public issuance of non-convertible debt securities These include Public financial institutions and Scheduled Banks; issuers authorised by the notification of CBDT to make public issue tax free secured bonds; Infrastructure Debt Funds - Non-Banking Financial Companies; NBFCs, registered with RBI, Housing Finance Companies registered with National Housing Bank (NHB) and entities which have listed their shares/debentures in the stock exchanges for at least three years.

The Board has also approved the SEBI (Procedure for Search and Seizure) Regulations, 2013, made on the lines of the provisions in the Income Tax Act, 1961 and for providing detailed procedures for such search and seizures by SEBI.

The proposal to make the IPO grading mechanism "voluntary" as against the current provision of the same being "mandatory" was also approved. The SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2013 were approved by the Board, subject to inclusion of the guidelines determining the settlement terms as part of regulations. As regards FPI regulation, the communication from the Department of Economic Affairs to the CBDT and to SEBI, conveying the decision, all three categories of FPIs would be given similar tax treatment as available to FIIs presently.

RBI (www.rbi.gov.in)

1. Non-Agriculture Loans against Gold Ornaments and Jewellery

RBI by Circular DBOD.NO.BP.79/21.04.048/2013-14 has permitted bullet repayment of loans extended against pledge of gold ornaments and jewellery for (other than agricultural purposes) subject to some guidelines viz: the amount of loan sanctioned should not exceed ₹1.00 lakh at any point of time; the period of the loan shall not exceed 12 months from the date of sanction; interest will be charged to the account at monthly rests but will become due for payment along with principal only at the maturity; banks are advised to prescribe a minimum margin and fix the loan limit and the account would be classified as Non-Performing Asset even before the due date of repayment, if the prescribed margin is not maintained.

IRDA (www.irda.gov.in)

1. Applicability of service tax on the Services Provided by IRDA

IRDA has issued Circular No. IRDA/ADM/CIR/003/DEC 13 dated 31.12.2013, approving for collection of applicable Service Tax on the services rendered by IRDA to the service receivers i.e. Insurance Companies, TPA's, Brokers, Agents, Insurance Repositories, Web Aggregators, Referral Entities and Surveyors with effect from the 01.01.2014. ■