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FOREWORD

Dear Readers

Over the last few decades India has emerged as a country of ever-expanding opportunities for Indian companies as well as multinational companies with cross border financial transactions, mergers, acquisitions. In the past India has been global number one in starvation death, getting food aid, foreign aid and willingness to give bribe. However suddenly after two decades of playing second fiddle, it is now predicted that India will grow faster than China in 2007. A country once regarded as bottomless pit for aids is competing for the number one position in the global growth league. India is all over the world not only with its investments and technology but also with its soft power, food, film, art and its message of peace and good will.

In this era of globalization, we have tried and highlighted in this issue certain topics reievant to the Indian companies going global. We have also considered the issues on transfer pricing, international taxation which is becoming relevant day in and day out.

The Sarbanes Oxley Act is considered as a world Corporate Governance. Sarbanes Oxley Act, was passed in response to a number of major corporate and accounting scandals. These scandals resulted in a loss of public trust in accounting and reporting practices. Therefore, to strengthen Corporate Governance and restore Investors confidence, the said Act was passed.

To promote convergence of Accounting Standards world-wide, the International Accounting Standards Board (IASB) has created a set of high quality Accounting Standards that can be consistently applied worldwide. Europe and Australia have adopted IFRSs from 2005. Canada has a plan that it will replace national GAAP with IFRSs over the next five years. Various Other countries such as India are adapting the IFRSs while formulating Accounting Standards in India.

US-GAAP (Generally Accepted Accounting Principles) are followed by the US-Based Companies and their subsidiaries across the globe. These GAAP Contain technical principles and rules for accounting. Any Company who wants to get listed in any stock exchange in USA has to prepare or convert financial statements as per US-GAAP requirements.

I would also take this opportunity to introduce the new addition made in the firm by way of Dr. Arjun Saini, Chartered Accountant who has joined us with his immense experience in handling SOX and US-GAAP. He did Doctorate on the topic entitled "Comparative Study of Indian Accounting Standards VS International Accounting Standards." Further Miss. Bhavna Gujjar, Chartered Accountant who been with the firm since last two years and looking after Internal Audit would be keenly pursuing 'VAT' related assignments. During this year we also added in our tirm Mr. Vishnu Thard, Chartered Accountant one of the ex-article of our firm, has joined as Audit Manager.

In year 2006 India Inc., truly had multiple orgasms. The stage in global Indian takeover was set early this year with the rise of Mittal Steel eventually taking over Arcelor despite significant resistant from parts of Europe. The year concluded with hot pursuit of Tata Steel to become one of the largest Steel Manufacturers in the World from its quest to acquire Corus. Todays stories of local acquisitions of a few 100 Crores have had to make room for bigger global play. Exports are at all time high, Foreign Direct Investments touched new heights, private equity investments in the year tops what, IPO's have together mobbed up during the whole year. BSE Sensex has reached its highest level during this year and salary package has been soaring high as never before.

The next few upcoming years seems to be rattling and rolling and we will try to keep pace to shake, rattle and roll with our clients. With this I sign off as we are ringing in the new year with a bang and bubbly.

"Wishing all a Happy And Prosperous New Year"

In order to serve you better, we remain.

Regards

S. L. Jain

S.L. JAIN

EXECUTIVE SUMMARY

Ways to Avoid Getting Criminally Prosecuted Under Sarbanes Oxely Act (SOX)

To implement safe SOX practices and defensive measures are the need of the hour. How to avoid litigation and SEC investigations under SOX? How do you keep yourself, your department, and your company out of the SOX spotlight? Can you spend your bonus, or will you have to give it back if the company has a bad year? Now-a-days these are the burning issues which are being discussed widely across the globe. In this article, we provide you with a few tips for keeping the litigators off your doorstep and sleeping soundly after SOX. The important tips for effective compliance of the SOX provisions are given below one by one:

1) Maintain an Active and Visible Audit Committee

Under SOX, every public company is required to have an audit committee that interfaces with the company's outside auditors. Many not-for-profit and private companies are opting to establish audit committees as well because they provide additional credibility for the audit process. The audit committee is responsible for giving good information to the auditors and communicating audit issues to management, so this is one committee you want to make active, visible, and well funded in your company.

2) Communicate About How to Communicate

Documentation can help buttress testimony and jog memories. Put policies in place to document how delegated work is supervised and how results and conclusions are communicated. Policies will vary for every company and may even be different within particular departments. An employee titles do not always convey the actual level of supervisory responsibility a position entails. Hence, proper documentation of job responsibility and work becomes important.

3) Policies and Section 404 of the SOX

Communication is key under SOX, but too much of it can also be a bad thing. Policies that micro manage workflow and audit minutiae can create their own red flags. For example, cynical attorneys may raise questions about why trivial policies were flexibly applied, or future auditors may demand discussion about why nonmaterial discrepancies were not further investigated or why items from last year's audit were dropped from this year's agenda.

4) Keep Bonuses Within Bounds

During Enron, WorldCom, and other corporate scandals, the media had a field day reporting on huge, questionable bonuses paid to executives of these failing corporations. In the post-SOX era, executive compensation has become a politically sensitive issue.

Document how and why executive bonuses were awarded.Your company's compensation committee should have a market analysis on hand to support that bonus amounts are in line in the event that they are later challenged. For instance, questions may be raised in a lean year as to why big bonuses were paid in a prior profitable one.

5) Separate the Whistle-blowers from the Whiners

Whistle-blowers are employees who raise questions of fraud or noncompliance with accounting or governmental regulations in the workplace. So that a serious and valid complaint does not get glossed over and later return to cause major lawsuit trouble for the company, every whistle-blower complaint should be fully investigated and its disposition documented. Make sure that levels of review are afforded to complaints based upon their seriousness and credibility and that compliance with company policy is documented at every level to determine which complaints may have hidden merit.

6) Invest in IT Tools/ Software

Buying and using a sensible SOX software product is a good way to demonstrate that your company is committed to strong internal controls and is being systematic in its compliance. If the software tool generates good reports and summaries, it is easier to document what people in the company knew for certification purposes.

7) Do Something with All That Data

Data gathered during a Section 404 audit should be evaluated according to a stated policy and also should be shared with the audit committee, management, and board of directors as appropriate.

8) Be Attuned to Triggering Events

Within four days of their occurrence (and sometimes less), SOX requires companies to disclose to the public (on Form 8-K) certain triggering events, such as the termination of major contracts, new financial obligations, write offs, and financial restatements. Companies that do not disclose these events in a timely manner would bear risk both at public sanctions and private litigation.

9) Document What is Delegated?

Litigation under SOX has an increased focus on what management knew and what it was supposed to know. Under SOX, management is allowed to delegate authority and even outsource certain types of decisions. It is not, however, acceptable for management to take measures to insulate itself from information as to how that authority is being carried out. Delegation of authority was a key issue in the M/s Health South scandal`s case, when CEO Richard Scrushy walked free while five of his subordinates were convicted of fraud. Prosecutors and the public were aghast and determined not to let many more slippery CEOs escape liability under SOX by claiming they did not know what their subordinates were doing.

Conclusion

The above cited important tips help us to make better compliance with the provisions of the Sarbanes-Oxley Act. The requirements of Sarbanes-Oxley cannot be evaluated in a vacuum. They are important because they have produced, and will produce improvements that help to restore and reinforce investor confidence in world markets, and lower the cost of capital to issuers. Section 404, for example, reaffirms that US.legislators are serious about internal control requirements. It is already clear that Section 404 is helping to strengthen the business operations of those US and foreign issuers who have seized the opportunity to use the internal controls assessment as a managerial opportunity and not simply a compliance exercise.

Difference between Indian GAAP and US-GAAP

(A practical approach with case study)

US-GAAP stands for "generally accepted accounting principles" adopted by the enterprises in USA in preparation of financial statements. All the US-Companies as well as Non-US Companies (Listed on any of the US stock exchange) are required to prepare financial statements under US-GAAP. Non-US Companies may prepare their financial statements on the basis of any foreign Generally Accepted Accounting Principles (GAAP). However, these Non-US Companies are then required to prepare a reconciliation statement showing the conversion from foreign GAAP to US GAAP. In this article, we explain the difference between Indian GAAP and US-GAAP.

The differences between Indian GAAP and US-GAAP in short are as follows:

1. Under US-GAAP, an additional statement "Statement of Change in Shareholders Equity" is required besides the Balance sheet, Income Statement and Cash flow Statement.

2. In Indian GAAP, there is no classification of Assets and Liabilities however, these are classified into current and Non-current items in US-GAAP.

3. Under US-GAAP, Comprehensive Income is to be shown while there is no such concept in Indian GAAP. Comprehensive Income under US-GAAP is adjustment of Income from non-regular sources.

4. Indian GAAP requires a "Profit and Loss Appropriation Account" to show the disposition of profit, but in US-GAAP, the disposition of profit is shown in the statement of changes in share-holders Equity.

5. Under Indian GAAP, Inventories are valued at lower of cost and net realizable value. However, in US-GAAP, it is the lower of cost or market value and the market value means the current replacement cost of purchase or production.

6. Under US-GAAP, cash may be classified as current or non-current depending upon the restriction on use of cash. But no such provision exists in Indian GAAP.

7. Under US-GAAP, the basic and diluted EPS are calculated by disclosing and deduction extra-ordinary items and cumulative effect of accounting changes from the income but no such requirement is there in case of Indian GAAP.

8. In Indian GAAP, Investments are classified into government, in subsidiaries, in partnership firm etc. but in US-GAAP, investments are classified into held for trading and held to maturity etc.

9. In case of business combination etc. only purchase method is available under US-GAAP, while under Indian GAAP, purchase method or pooling of interest method is to be used depending upon the type of amalgamation.

10. Under the US-GAAP, impairment of asset is the difference between the fair value and carrying amount. But in case of Indian GAAP, the impairment is the difference between the carrying amount and recoverable amount.

11. Under US-GAAP, stock split is recorded at fair value but at par value in Indian GAAP.

12. Under Indian GAAP, the segment reporting is based on primary and secondary reporting format, but there is no such classification in US-GAAP.

Therefore, the reasons for the preparation of reconciliation between Indian GAAP and US-GAAP are:

- Making the financial statements comparable with the US Companies, and
- To provide a level playing field to the US Companies.

International Financial Reporting Standards (IFRSs) (Growing Opportunities for India)

It is felt that the adoption of International Accounting Standards (IASs) or "International Financial Reporting Standards" (IFRS) by the corporate bodies in the developing countries is not only imperative, but also gives an opportunity to have access in the capital markets at global level. It is an international trend, which is recognized as 'best practice' around the world. More and more companies the world over are speaking the same accounting language. Because the Accountancy and Financial Reporting activities play a pivotal role in the world of trade and commerce for smooth running of Industry and Business. Capital markets are increasingly becoming competitive and hence the number of companies complying with IFRS is likely to grow in future. According to Gernon & Wallace (1995) model, any accounting institutions and practices should be related to their respective environment of that country. Those five environments are of cultural as well as non-cultural factors such as:

1) Societal environment,
2) Organizational environment,
3) Professional environment,
4) Individual environment and
5) Accounting environment, which are separate but interacting slices, which together constitute the accounting ecology.

The accounting treatments basically differ on various economic, legal, social and cultural factors of that concerned country. Hence there are major countries that follow their own country-specific Generally Accepted Accounting Practices (GAAP) standards rather than the IFRS.

It has been considered (Murphy, 1999) that companies listed on any foreign stock exchanges may find reporting their financial in IFRSs to be more advantageous to them then those companies which does not have listing on any foreign stock exchange. The term International Financial Reporting Standards (IFRSs) has both a narrow and a broad meaning. Narrowly, the IFRSs refer to the new numbered series of pronouncements that the IASB is issuing, as distinct from the International Accounting Standards (IASs) series issued by its predecessor. More broadly, IFRSs refers to the entire body of IASB pronouncements, including standards and interpretations approved by the IASB and IASs and SIC interpretations approved by the predecessor International Accounting Standards Committee. IFRS are continually reviewed and updated to take account of the changing business environment and new challenges that emerge from time to time. As of now and till date, there are seven new IFRS International Financial Reporting Standards developed by International accounting Standards Board. These are:

IFRS 1
First-time Adoption of International Financial Reporting Standards, June 2005

IFRS 2
Share-based Payment, February 2004

IFRS
3 Business Combinations, March 2004

IFRS 4
Insurance Contracts, August 2005

IFRS 5
Non-current Assets Held for Sale and Discontinued Operations, March 2004

IFRS 6
Explorations for and Evaluation of Mineral Assets, June 2005

IFRS 7
Financial Instruments: Disclosures, August 2005

Indian Perspective

In India, the accounting and legal systems have been developed on British pattern. However, the Companies Act and other related statutes to the industry and Commerce were amended a number of times to meet country's changing requirements. At present after the deregulation of the economy in 1991, it is trying to bring its accounting standards closer to the IFRSs, subject to applicable local laws, customs and business norms. The increase in FDI in India has further necessitated the use of internationally accepted accounting practices and led to a rapid adaptation of the IFRSs. In India, the regularly framework governing corporate disclosure includes the Companies Act 1956 and Securities and Exchange Board of India 1992. The annual accounts are prepared according to section 211 and schedule VI of the Companies Act. Presently, Indian accounting standards are of good quality in most instances, in fact are practically the same as IAS. A switch to IAS would be a more in form than substance.

Anyhow, adopting IAS will be of tremendous help in attracting foreign capital and thereby lowering cost of capital to Indian companies. It is suggested that the cost of capital is lowered for firms that adopt international accounting standards. A number of leading companies like Infosys and Bharathi Tele Ventures among them have voluntarily adopted IAS or US GAAP. It is significant to note that India has ceded its power of policy formulation, which is actually in the hands of the WTO, IMF and the World Bank (Thapar, 2001).

The survey of a sample of annual reports of Indian listed companies suggests the fact that Indian companies do not voluntarily follow IFRSs (Bikram, 2005). This implies that, most likely, the companies do not perceive these standards to be very suitable to them. The comparison of Indian Accounting Standards with the IASs reveals that the Indian standards require more disclosure than the International Standards in cases of Accounting for leases: Earning per Share; Consolidated financial statements; Accounting for investments in associates; Financial reporting of interests in joint ventures etc.

Think globally, act locally is imperative for survival and growth in the economy. In an increasingly competitive global marketplace, the ability to operate profitable in diverse geographic markets, and to shift operations flexibly between countries may be essential to the success of any business. It also creates vast opportunities for Indian management professionals all over the world. But operating globally generates a wide variety of practical, legal, and HR and finance issues. Multinational firms must comply with host countries' laws on tax, pensions, business practices and human resources. One country's entrepreneur may be another's antitrust violator. Hence, continuous improving performance has become a persistent need for companies striving to remain competitive and effective in this fast changing environment.

In recent times there has been a paradigm shift in many economies in the way that corporate governance, business ethics and compliance are approached. It is a shift that continues to be driven by demanding performance expectations, increasing stakeholder demands and growing public scrutiny after some spectacular failures around the globe. Potentially, this is a highly positive development.

Much has been heard about the financial scandals and corporate frauds that have shaken the financial scandals and corporate frauds that have shaken the financial world in the past especially in Europe and the United States. Such failures are causing regulators, governments and stakeholders. This will have serious impact on corporate worldwide. In order to prevent such repetitions, to rebuild public confidence in financial reporting, there has been a major overhaul of a number of accounting and auditing standards in recent years.

The face of liberalization, privatization and globalization of economies have widened the horizon of trade, commerce and industry worldwide. General Agreement on Trade in Services (GATS) and World Trade Organization (WTO) has mandated to achieve greater degree of liberalization in all the service sectors. Powerful new technologies and communications devises have opened the world for an explosion in cross-border commerce and capital creation. Many economies are converging towards globally integrated system.

Therefore, it is very clear that the adoption of IFRS could have a huge positive impact on the Indian economy by affording more Indian companies access to foreign capital and lowering the cost of capital generally.

The growth rate in respect of trade and commercial services in Asian countries is above the global average and service segment has become the single largest contributor to GDP ahead of agriculture and industry. The emerging regime for global financial regulation is likely to continue to be regulated in the future. Hence the Manufacturers, service providers will have to interact with the global level market-hub. In India too, the service sector has emerged as the new engine of economic growth as has been witnessed in developed countries like USA and UK. But it is argued that the culture of India is characterized by high power distance, the country has a high preference for uniform accounting standards. Hence, IFRSs may not be suitable to the Indian environment (Chand 2001).

China has already become the safest area for investment with the best prospect for return on investment. For many MNCs it is a global production base and manufacturing centre. Devid Wu of Pricewaterhouse Coopers and Company based in Beijing says that what it hot in China is IFRS. Because over the past 25 years, China has moved from a socialist planned economy to a market economy. Hence its sound financial rules are absolutely fundamental. Thousands of Companies in China are using IFRS today to woo global investors. That is why it has attracted huge FDI and able to achieve 8 to 10 percent GDP growth over the last two decades. Under such circumstances, why cannot India achieve?

Conclusions

Therefore India should redefine its objectives by making radical structural reforms in the democratic economy. Investors also want companies to report on a broad set of non-financial measures, which, combined with financial reporting might provide a better basis for judging corporate performance. The International Accounting Standards Board have agreed to collaborate. In the context of the emerging global economy such convergence is imperative. Therefore a desire for a new single set of accounting standards has been expressed frequently worldwide as Globally Accepted Accounting Principles. While adapting IFRSs in Indian context, it should get sufficient participation from industries, accounting academics, voluntary organization of academics, environmentalist, ecologists and humanists. And the ICAI should carefully consider the suitability of the IFRSs in Indian context further.

Selection of Method under Transfer Pricing

The selection of most appropriate method is to be made having regard to certain prescribed factors, such as the nature of the transaction, the availability of relevant data, the possibility of making appropriate adjustments, etc. Now, we should understand the specified methods for the purpose of applying them to test the controlled transactions, whether they are at arm,s length or not. While determining the arm`s length price; one has to evaluate the various methods specified below:

1. Comparable Uncontrolled Price Method (CUP).
2. Resale price method (RPM)
3. Cost Plus method (CPM)
4. Profit-Split Method (PSM)
5. Transactional Net Margin Method (TNMM)
6. Such other method as may be prescribed by the CBDT (No any method has been prescribed by the CBDT)

1. Comparable uncontrolled price method

The comparable uncontrolled price (CUP) method offers the most direct way of determining an arm's length price. It compares the price charged for goods or services transferred in a controlled transaction to a price charged the property or services transferred in a comparable uncontrolled transaction. The OECD report states that if it can be used, the CUP method is preferable to all over other methods.

Example

Far East Steel Ltd (FES), a Japanese company, manufactures steel ingots in the far east and ships them related and unrelated foundry businesses in the UK. The ingots which FES ship to its related and unrelated party customers are identical in every response. Moreover, the terms and conditions of sale are also identical, except that the related party customers are given payments terms of 90 days opposed to only 45 days for unrelated party customers. Based on this information, it is determined that the unrelated party ingot sales represent a CUP for inter-company transfer price. The difference in payment terms must be taken into account, however, before the actual arm's length inter-company price can be determined.

Based on prevailing interest rates, it is determined that the difference in payment terms is worth 1.5 % of the ingot price. Adjusting unrelated party price this difference is established that inter-company price should reflect the unrelated party price plus 1.5%.

2. Re-sale price method

An arm`s length price is determined using the re-sale price method by deducting an appropriate discount for the activities of the reseller from the actual re-sale price. The appropriate discount is the gross margin, expressed as a percentage of net sales, earned by a re-seller on the sale of property that is both purchased and re-sold in an uncontrolled transaction in the relevant market.

For example, company A has sold a product to an associated company B a Rs.1000. The Company B has resold the same to an unrelated party X at a price of Rs. 2000. In order to arrive at arm`s length price between A and B the price carged by B to X would be scrutinized. If reasonable profits in hands of B are presumed at Rs. 600, arm`s length price between A and B will be Rs. 1400 (2000-600). There may be further adjustments due to customs duty, etc.

While resale price method may require less product comparability, it is a fact that closer comparability of products will produce better results. The factors to be considered in this method are level of costs, value addition at each stage, time-frame of resale, computation of gross margin, etc.

3. Cost Plus Method

   A transfer price can also be determined by providing a reasonable, mark-up on the cost.

4. Profit Split Method

   This method is applicable where transactions are so inter-related that they can not be evaluated separately for the purpose of determining arm`s length price of any one transaction. The profit-split method first identifies the profit to be split for the associated enterprises . Then the profit so determined is split between the associated enterprises on the basis of functions performed, assets employed or to be employed and risk assumed by each enterprise. Such contribution is valued to the extent possible by any available reliable external data.

5. Transactional Net Margin method (TNMM)

   In case of this method, the net profit margin realized by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed in the enterprise or having regard to any other relevant base. Such net margin then, may be compared with comparable uncontrolled transaction, which the tax-payer has entered into with unrelated enterprise. If this is not possible, net margin that would have been entered in comparable transactions by an independent enterprise may be compared. Therefore, this method operates in a manner similar to cost plus and resale price methods.

6. Such Other Methods may be prescribed by the Board:

   The CBDT may also prescribe any other method. So far the CBDT has not prescribed any method.

Conclusion

The determination of the appropriateness or otherwise of a transfer price under each of the criteria stated above suffers from certain limitations. There is no specific yardstick or one single method which can be considered as the ideal basis in all circumstances. However, there is no doubt that the comparable price criterion, especially since it involves an element of external evidence, is probably most appropriate. But in its application, various practical and commercial realities have to be considered.

Applicability of the re-sale price criterion is more relevant in a situation where the buying associated entity is primarily engaged in re-selling the goods, without there being much value addition.

The cost plus criterion may be more appropriate where the entity is doing job work for an associated enterprise. However, it suffers from the basic limitation, by way of its underlying assumption that there has to be a profit in each transaction.

The Profit Split Method is particularly relevant in the case of associated units, wherever units have been set up primarily to cater to the demand of specified purchasers.

The Transactional Net Margin method (TNMM), is relevant in respect of sale in times recession/supply gluts.

In selecting the transfer price, what is important is a judicious evaluation of the situation, commercial realities, and a realistic application of various principles so as to reach a reasonable judgment as to appropriateness or otherwise of the transfer price.

Controversial Issues Arising From The Tax Treaty Agreements [International Taxation]

1. Presumptive Income and Actual Income

Under sec 44B, 44BB, 44BBA, 44BBB income earned from shipping business, exploration of mineral oils, income from royalties, Fees for technical services, interest and Dividend, Civil construction, turn key project etc are taxed at flat rates. This type of assessment is made for administrative convenience. But treaties with a number of countries provide for the levy of tax on the actual profits with reference to the business in the Income tax Act.

2. Permanent Establishment (PE)

The term PE even though a very essential clause in the tax treaty agreement, is not defined under the IT Act. The term business connection resulting in the deemed concepts to accrue or arise mentioned in the IT Act is akin to PE. However there has been a spate of jurisdictions on this subject.

Various problems have arisen due to tax treaty provisions, e.g. in the IT Act when a person is identified as ordinarily resident, he is taxable on the income from every source in the world. However some treaty provisions conflict with this view. E.g. Under the treaty terms with Germany, to tax the income in the host country, there must be PE in that country. Therefore adventures in the nature of trade in which a company may indulge without having an agent through whom or a fixed place from which they are launched will escape tax in the host country even though under source jurisdiction it would be taxable in the host country. The force of attraction rule in the treaty will solve this.

India's tax treaties with US, Norway, New Zealand and some other countries provide for the operation of the force of attraction rule. But the treaties with countries like UK, Germany, and Italy do not contain this clause. Therefore tax payers of these countries and from countries with which India has not yet entered into tax treaties will levy tax on all the income accruing or arising in India under sec 9 of IT Act. The different treatment to the tax payers depending on the treaty terms amounts to discrimination among the tax payers.

In such a situation the proper course would be to ensure incorporation of the force of attraction rule in every treaty by revision or amendment. Alternatively it should be made clear that all the income in the source country which is not covered by the PE may be subjected to withholding taxes, if under the law of that country, the income is taxable, all the casual income and the adventures in the nature of trade will fall in this category.

3. Constitution Issue

There is some controversy on the scope of giving effect to force of attraction rule provided in the tax treaties. As per this rule, if a company conducts any business activity in India of the same kind or the similar kind as those effected through its PE, shall be assessable to tax in India. These clauses are likely to raise legal controversies. That is in the absence of specific provisions in the IT Act; it is legally permissible to tax income on the basis of the provisions in the tax treaties

The Tax treaty simply implements the IT Act with the additional clarification provision. It merely recognises and reasserts India's right to tax Income from all activities within its territory which is inherent in the existing tax regime It does not open up a new scheme or widen tax base. The other view is that it does enlarge the concept of agency in this country. Since a treaty can only curtail the scope of existing provisions and cannot find fresh pastures for the revenue. It is unenforceable to that extent.

To end the legal controversy, it is safer that if a treaty requires the expansion of the tax base, to incorporate necessary legislative action to amend the Income tax Act

4. Salaries and Wages

Normally salaries or wages and similar remuneration received by any individual would be liable to tax in the state in which he is employed. However number of tax avoidance schemes frequently adopted by the Multinational Company's complicated legal questions arises. E.g. whether the case of an American resident employed by a Singapore company in India will be governed by India's treaty with Singapore or by India's Treaty with USA. These types of situations require a mutually agreed procedure to solve the problem.

National topics/issues

Legal updates

(a) Income Tax Law

1. CIT, Mumbai Vs. General Insurance Corporation 256 ITR 232 (SC):

   Whether the expenditure incurred by a company on account of stamp duty and registration fees for the issue of bonus shares is allowable as revenue expenditure? The SC held that the issue of bonus shares does not result in the expansion of capital base of the company. Therefore, the expenditure incurred by the company on account of stamp duty and registration fees for the issue of bonus shares is allowable as revenue expenditure.

2. CIT Vs. Aggarwal Engg. Co. (2006) 156 Taxman 40 (P & H):

   The assessee who was a civil contractor filed his return of income for the relevant assessment year. The assessment was made but was cancelled under section 263. Thereafter, the Assessing Officer made a best judgment assessment under section 144 applying the net profit rate on contract receipts to estimate the income from contract work. Further, he made separate addition on account of introduction of unexplained cash and unexplained payments for purchases outside the books of account. These additions were deleted by the CIT (A) and Tribunal. The High Court justified the views of the CIT(A) and Tribunal holding that once the net profit rate was applied, no further addition was called for in respect of purchases and introduction of cash.

3. CIT Vs. K.J. Ramaswamy 286 ITR 77 (Mad.):

   The High Court observed that in order to attract clubbing provisions, the income generated from transferred assets should be available for the benefit of the minor child i.e. the income must be readily available for the use of the minor. Where the income is only credited to the minor`s account in the trust to remain there till he attains majority, then such income is not for the immediate use of the minor. It was held that so long as the beneficiary minor child receives his share income only on attaining majority, clubbing provisions are not attracted.

4. Population Council, Inc; In re. (2006) 156 Taxman 125 (AAR-New Delhi):

   The applicant, a non-resident, is a non-profit international organization based in USA. The applicant incurs expenses in India, which include fringe benefits provided to the employees, falling under the heads traveling, conference, entertainment, hospitality etc. These expenses are met by remittances from the head office. The applicant contended that it is not liable to pay fringe benefit tax (FBT) under section 115WA since its income is not chargeable to tax in India. The question on which the applicant sought advance ruling of the authority is whether it is liable to pay FBT under section 115 WA on the fringe benefits provided to its employees working in India.

   The AAR observed that section 115WA provides that FBT is in addition to income-tax and it is to be charged to tax even when no income tax payable by an employee on his total income computed in accordance with the provisions of the Act. Therefore, it is pointless to contend that no FBT would be payable by the employer, if its income is not chargeable to tax in India.

(b) Company law

Revised Reporting Norms [72 SCL (St) 3]: The SEBI has issued Circular No. 6 dated 20/07/2006 giving information and format of monthly Cumulate Report [MCR] and Annual Statistical report(ASR)modifying the same to incorporate the data on unit capital.

(c) Excise law

1. New Shorrock Mills Vs. CCEx and Cus; Vadodara 2006 (202) ELT 192 (Tri.LB): large Bench of the Tribunal held that doubling or multifolding of duty paid single yarn would not amount to manufacture. The large Bench of the Tribunal relied upon the decision of the Apex Court in case of Banswara Syntex Ltd.1996 (88) ELT 645 wherein it was held that a single ply yarn was first manufactured and thereafter it was doubled or multifolded, depending upon type of fabric to be woven. The liability to pay excise duty arose on the manufacture of the single ply yarn and not after the same had been doubled or multifolded. The stage of levy of excise duty in such case was the single yarn stage.

2. CCEx Bangalore-11 Vs. Karnataka State Agro Corn products Ltd.2006 (202) ELT 47 (Kar):

   The Karnataka State Agro corn products Limited (assessee) manufactured food products and was fully owned by the State Government. The food products was supplied to various Government departments on payment of excise duty. However, subsequently, it was noticed that the assessee was not able to pay excise duty and thus, a refund claim was filed. The department rejected the refund claim on the ground of unjust enrichment i.e. the state being different from state undertakings; the duty burden had been passed on. The high court observed that the state government controlled the Government undertakings in the matter of management, finance, administration etc. State Govt. had an effective control over these undertakings as the policies or programmes of these Undertakings were also, to a certain extent, evolved by the state government. The High Court held that unless the department was able to show that the government undertakings were totally different from all angles, it would not be possible to accept the argument of unjust enrichment on the part of the State undertakings. A refund granted to the State Undertaking would ultimately go to the State`s exchequer.

3. CBEC Letter No. 836/13/2006-CX dated 25/10/2006:

   Salient features of revised formats of ER-1 ER-3 returns have been detailed in this circular.

4. CBEC Letter No. 837/14/2006-CX dated 03/11/2006:

   Procedure for debiting the original scrips issued under served from India Scheme (SFIS) for payment of Central Excise Duty in the case of domestic procurement of goods has been prescribed in this circular.

5. CBEC Letter No. 838/15/2006-CX dated 16/11/2006:

   Agricultural Tractors falling under chapter heading 8701 still remain exempted even if they are incidentally used for hauling trailers. The primary use of tractor should be the deciding factor & if they are primarily used for agricultural purposes, they will remain exempted.

(d) Service Tax

1. Central Government Vide notification No. 29/2006-ST dated 2nd November, 2006

   has substituted Rule 4(2) whereby option is granted to person liable for paying service tax to registrar premises or office of his option from where centralized billing/accounting systems are located provided he:

(i) provides such service from more than one premise or office; or

(ii) receives such service in more thanone premise or office; or

(iii)is having more than one premise or office, which are engaged in relation to such service in any other manner.

2. Central Government Vide notification No. 29/2006-ST dated 2nd November, 2006

has substituted Rule 4(3) so as to provide that centralized registration shall be granted by commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralized billing/accounting is done, are located. This sub-rule shall not affect centralized registration already granted to premises/offices having centralized billing/accounting system prior to 2nd November,2006.

3. Central Government Vide notification No. 29/2006-ST dated 2nd November,2006

has amended Rule 5(4), which requires assessee to make available all records at reasonable time at the registered premises (i.e. all premises or offices from where assessee is providing taxable service) to CEO authorized in writing by AC/DC or by the audit party deputed by the Comptroller & Auditor General of India for inspection and exemption.

4. Chatushrungi Seva Samitee Vs. CCE, Pune (2006) 5 STT 226 (Mum.-CESTAT):

In the instant case, the trust provided the service of Mandap Keeper and permitted sale of toys,garlands,flowers foods and other articles in their premises. Service Tax was demanded on the rent amount received by the trust from various sellers, prima facie it is not taxable service covered under the category of Mandap Keeper service and therefore the demand was set aside.

(e) FEMA

1. Investments by Mutual Funds in Overseas Securities Liberalisation of [A.P. (DIR Series) Circular No. 11 November 16, 2006]

Though this Circular the aggregate ceiling for overseas investments by Mutual Funds, registered with SEBI, is increased from US$ 2 billion to US$ 3 billion with immediate effect. All other terms and conditions and operational guidelines as issued by SEBI have remained unchanged. Monthly reporting requirement to the Reserve bank, as stipulated vide paragraph 5 of the AP Dir (Series) Circular No. 3 dated July 26,2006, for statistical purpose will continue.

2. Facilities to NRIs/ PIO and Foreign Nationals- Liberalisation [A.P. (DIR Series) Circular No. 12 November 16, 2006]

AD Category-1 Banks may, now allow remittances out of balances in NRO accounts including sale proceeds of immovable property provided the amount does not exceed US $ one million per financial year (April-March). Other terms and conditions will remain unchanged.

REMINDER	
Monthly Due Dates - January - March 2007	
Direct Taxes 7th of Every Month	Monthly TDS Payment
Service Tax 5th of Every Month	Monthly Service Tax Payment by Companies / Individuals / Proprietor's / Partnership except for March
31st March	Service Tax Payment by Companies / Individuals / Proprietor's / Partnership for the Month of March 07.
Other Laws 15th of Every Month	Provident Fund Payment
21st of Every Month	Payment of Monthly E.S.I.C.
Due Dates for the Quarter January - March 2007	
Direct Taxes 15th January, 2007	Quarterly Returns of TDS & TCS
15th March, 2007	25% of Tax as 4th and Final Installment of Advance Tax for companies.
15th March, 2007	40% of Tax as 3rd and Final Installment of Advance Tax for assessees other than Companies.
Fringe Benefit Tax 15th January, 2007	FBT for the Quarter October to December 06
15th March, 2007	FBT for the Quarter January to March 07

NOTES