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Tax residency certificate issue clarified

It has been clarified by the finance ministry that a tax residency certificate (TRC) will be sufficient to claim tax concessions on investments routed through countries such as Mauritius.

The apprehensions over TRC go back to a provision in the previous budget, for fiscal 2012-13, which made it mandatory for all foreigners to furnish a TRC from their home country to claim benefits under the double taxation avoidance agreement.

But the language used in Budget 2013-14 spooked foreign investors, who saw it as a fresh provision that could empower tax officials to deny tax benefits to investments routed through Mauritius.

The India-Mauritius double taxation avoidance agreement offers exemption from capital gains tax to Mauritian residents. As a result, foreign investors from third countries prefer to route investments through the island nation but have to furnish a TRC to claim the tax benefit.

According to the finance minister, additional information can also be asked by the government but the TRC issued by a foreign government will be accepted as a certificate of residence

Foreign cosmetics companies plan investments

South Korea's Innisfree Corp, Italy's Officina Farmaceutica Italiana and Canada-based Faces Cosmetics are among beauty products makers that have lined up investments in India.

A slowing economy and slowdown in consumer spending on non-essential products and services clearly haven't stopped Indian women from putting up their best face. They are splurging on beauty products, making cosmetic bands from around the world rush for toehold in this booming market.

Innesfree, Officina and Faces Cosmetics have approached the Foreign Investment Promotion Board to invest in single-brand retailing ventures in India. While Innes free and Faces are opting for fully owned subsidiaries, Italian Officina has filed for a joint venture with a New Delhi based businessman.

Shoppers Stop, the country's largest department store chain, meanwhile, plans to open franchisee stores of US-based Bobbi Brown Professional Cosmetics Inc.

S Korea's Innisfree plans to invest Rs. 70 crore to sell its beauty and cosmetic products in India. Italy-based Officina holds 51% stake in its joint venture, which has proposed to invest about Rs. 1.7crore to open Bottega Di LungaVita-branded stores and plans to increase the investment to Rs 7crore over the years. It plans to start by opening two stores in New Delhi followed by outlets in Mumbai and other major cities.

Faces Cosmetics, which is currently sold through about 20 franchise stores in India, now plans open about 20 company-owned stores each year for the next few years.

Japanese loans only after environment clearance

Japan, which funds infrastructure projects in India through its development assistance arm, the Japanese International Cooperation Agency (JICA), will now sign loan agreements only when most of the land acquisition and environment clearance is done. It will also increase funding if projects are implemented on time or in a smooth way.

While JICA, which has almost trebled its loan amount in the past decade, is committed to financing infrastructure projects, it will only increase the level of lending if projects are put on track faster. On the table are metro rail projects in Delhi, Kolkata, Mumbai, Bangalore and Chennai but commuters may have to wait as the agency will decide how much to lend after reviewing the on-going phases of the projects.

JICA is focusing on the Delhi-Mumbai and Chennai-Bangalore industrial corridors apart from a few other infrastructure projects. It is in talks with the government on which project to take up next and which ones should be funded with public money. About 640 km of the JICA funded first phase of the western freight corridor along the Delhi Mumbai Industrial Corridor is in the process of financial bid evaluation and the remaining 280 km stretch is in the technical bidding stage.

In the past 10 years, the agency has committed a total of JPY 2,065 billion. The bulk of this has been for the infrastructure sector — about 49% of its total assistance since 2002 has gone into transportation projects and 20% to the power sector. In March 2013, the Japanese agency agreed to give the Indian government soft loans up to Rs. 11,400 crore, a big chunk of which will be used for building the Dedicated Freight Corridor.

Tax treaties not to provide I-T return leeway anymore

Those availing of treaty benefits would now have to file returns of their incomes in India, even if those aren't liable to be taxed here. The government has changed the Income Tax Rules, making it mandatory for certain classes of assesses, including those covered under bilateral tax treaties, to file their returns in India. The new rules are effective from April.

Earlier, those who did not pay taxes in India, owing to the provisions under the double taxation avoidance agreement between India and the country of origin concerned, did not have to file tax returns in India.
According to a recent the Central Board of Direct Taxes notification, a person claiming any relief of tax under section 90 or 90A or deduction of tax under section 91 of the Income Tax Act, shall be required to furnish the return for assessment year 2013-14 and subsequent assessment years. The move would primarily impact investors from Mauritius who claim treaty benefits and do not file returns on the pretext that their income isn't taxable in India.

Taxpayers would have to report foreign income separately, under a new schedule. They would have to bifurcate the foreign income to which provisions of a tax treaty apply and quote the tax identification number (TIN) in case tax has been paid in a foreign country. If the TIN is not allotted by that country, the assessee would have to furnish his passport number. For instance, if a taxpayer earns income from interest on bank deposits in India, as well as abroad, he would have to state the interest earned on foreign income separately.

Taxpayers may claim tax benefits under a tax treaty or the Income Tax Act, whichever provides greater benefits. In Finance Act, 2012, the government had said a tax residency certificate (TRC) would be required to prove the taxpayer was the resident of the tax treaty country concerned. It said had TRC would be a necessary, but not a sufficient condition for availing of treaty benefits.

The new rules also make it mandatory for taxpayers with total annual income of more than Rs 25 lakh to declare their domestic assets, including land, buildings, bank deposits, shares, insurance policies, loans, jewellery, bullion, drawings, paintings, yachts, boats, etc. Now, as part of foreign asset reporting norms, assesses also have to state their foreign bank account number and the details of the trusts in which they are trustees.

Stamp duty by states to hit road projects

A recent decision by Gujarat and Andhra Pradesh to charge stamp duty from road developers implementing projects awarded by the highways authority is raising fears that the high amounts could lead to a cascading impact on project costs and developers' financial burdens especially if other states follow suit.

The two states have slapped stamp duty evasion notices arguing that the concession agreements they had signed with the National Highways Authority of India (NHAI) involved letting out land in the form of a lease, which must be registered.

Stamp duty rates vary across states, but even if a 5% duty is charged on an average, highway development costs could increase by a few hundred crores. Developers have pointed out that highway development contracts cannot be considered leases since there is no transfer of assets and the projects are of public interest.

Stamp duties are a significant source of revenue for state governments. In one recent instance, a concessionaire was asked to pay Rs. 80 crore towards deficit stamp duty including penalty for non payment of the duty. A demand notice served on another project has sought proof of stamp duty payment, failing which "the recovery of stamp duty along with late payment penalty will start."

At present, the decision to charge or waive the duty rests with the state. In the case of the Yamuna Expressway, for instance, the Uttar Pradesh government had given an exemption since it wanted to promote development-oriented projects

Foreign chains get leeway on back-end investments

The mandatory $50-million (Rs 250-crore) back-end investment to be made by foreign multi-brand retail chains would not be restricted to green field (new) facilities alone.

According to Department of Industrial Policy & Promotion (DIPP), a foreign retail chain is free to buy a brown field (existing) facility but it would need to invest at least $50 million towards creating additional back-end infrastructure there.

Greenfield units relate to areas where no previous facilities existed, while brown field ones are those often under-used projects that have potential for re-development.

In effect, a foreign player can tie up with an Indian retailer that already has back-end infrastructure, provided it makes the mandatory investment in creating additional facilities to strengthen, say, the cold chain.

According to the FDI policy on multi-brand retail, the minimum amount required to be brought in as FDI by a foreign investor is $100 million. At least 50 per cent of the total FDI brought in must be invested in back-end infrastructure within three years of the first tranche of FDI. The policy is quiet on whether the investment must go into new back-end or existing facilities like cold storage. Other issues around which multi-brand retailers have been seeking clarifications on include 30 per cent sourcing from medium and small enterprises and state-wise permissions for opening outlets.

India Inc. to get freedom on use of options

India Inc will soon have greater flexibility in structuring deals through use of options, with the Law Minister clearing a put & call option regulation framed by the Securities & Exchange Board of India. This means that for mergers & acquisitions, listed firms could use such options that create a right to buy/sell more shares in the future. The issue was stuck with the ministry for nine months.

Sebi was earlier opposed to put & call options on the ground these encouraged speculation it had rejected the use of these in two deals, including one between Cairn and Vedanta in August 2010. Sebi also felt the arrangement did not conform with the requirements of spot-delivery contract or a derivative contract under Section 18A of the Securities & Contract Regulation Act. A similar arrangement between two investors in case of a firm, Vulcan Engineering, was also rejected by Sebi as the contracts were to be exercised at a future date, and so did not qualify as spot-delivery contracts.

A call option allows the holder to buy a security at a predetermined price, usually above the current, within a limited time. A put option gives the holder the right to sell securities at a specified price within a limited period. When an option is exercised by the holder, the shareholder is obligated to buy or sell the shares at the predetermined price. While a put option provides an investor an exit route from a firm, a call option gives the option to increase the shareholding in the firm.

Reserve Bank of India also had reservations about the legality of the put/call option system. To address its concern, Department of Industrial Policy & Promotion had earlier inserted a provision in the foreign direct investment policy that said any instrument with an inbuilt option would be considered debt and treated as external commercial borrowing.

Sebi has since softened its stand and sent a revised regulation as put/call option was an integral part of modern finance. Sebi drew up regulations and sent to the finance and law ministries for vetting. The new regulation is expected to be notified shortly.

Net telephony providers will be asked to set up servers in India

India will mandate that all firms offering internet telephony, including popular online phone service provider Skype, must set up a server in the country if they want to continue offering this facility here.

The move is aimed at allowing law enforcement and security agencies get access to newer forms of communication that can't be tracked by traditional monitoring systems.

The government has also decided to ask internet service providers and mobile phone companies to segregate internet protocol (IP) addresses on a state-wide basis - a step that will allow the government to block social networking sites or any other websites and even internet telephony on select states or regions in the country.

Necessary provisions to this effect may be incorporated through amendments in Indian Telegraph Act, 1885 and Information Technology Act, 2000.

Contract manufacturer may take P&G to court

Procter & Gamble India could face a legal challenge from one of its leading contract manufacturers, JHS Svendgaard, for not renewing a contract to make Tide detergent. The contract manufacturer claims that a plant in Kalaamb, Himachal Pradesh was set up in 2010 to exclusively make Tide detergent and that it would suffer considerable financial losses because of the move.

P&G for its part says that it does not intend to renew the contract on account of the financial instability roiling JHS.

JHS has hired counsel to take legal action for non-renewal of contract since over 70% of its business comes from P&G.

JHS, a listed entity, says that they could lose Rs. 200 crore if the contract isn't renewed. The company claims that it has been making profits since 1996 and is a low-debt company. It further claims that it has borrowed heavily, primarily on many assurances of P&G, both verbal and written, to invest in their three businesses.

P&G denied this version of events asserting that they have neither communicated any such demand, nor does the JHS-P&G contract make any such stipulation.

While announcing the new detergent plant three years ago, JHS had said that with the production capacity of about 10,000 tonnes per month, the plant was set to be the largest off-site unit for Procter & Gamble in India.

Highway projects get special green exemption

In a major step towards removing hurdles to implementing national highway projects, the Cabinet Committee on Investment (CCI) has relaxed forest clearance norms for these projects. It has decided to give "special exemptions" on forestry clearances. For linear projects, it will de-link the grant of environment clearances from forest clearances.

CCI has also raised the ceiling of 4,000 km of four-laning under the National Highways Development Project (NHDP) phase-IV to 8,000 km — on a build, operate and transfer (BOT-toll) mode. It has allowed the upgrade of 4,000 km of roads on an engineering, procurement and construction (EPC) basis. For public-private partnership projects, the debts due to lenders would be considered "secured" loans.

CCI also decided to treat strengthening and widening existing national highway infrastructure projects differently from new projects and, in the case of 'widening' projects, allow the construction of national highways in non-forest areas.

Italian shoemakers eye India

High-end Italian shoemakers are looking at India as a replacement for their production base in Europe. These brand manufacturers are also scouting for local partners. Some of these companies are Baldinini, Loriblu, Giovanni Fabiani, Nero Giardini, Janet & Janet, Fabi and Fratesi.

Another attraction is growing demand here for their products.

Overall, the Indian footwear market is estimated at about Rs 19,900 crore, with a yearly growth rate of eight to 10 per cent. The market includes casual, formal, semi formal and sports shoes, along with sandals for men and women.

The men's segment is 59 per cent of the market. The overall share of organised retail is 20 per cent and is expected to reach 25-30 per cent by 2015.

RBI makes debt recast norms more stringent

The Reserve Bank of India (RBI) has said that all loans recast after April 1, 2015, should be classified as non-performing asset (NPA). Also, from June 1, 2013, the provisioning requirement for fresh standard restructured advances would has been increased to five per cent from 2.75 per cent, for the interim period.

For the existing stock of restructured assets, provisioning would be increased to five per cent in a phased manner over three years.

At present, banks are allowed to recast debt without classifying it as NPA but they have to make higher provisions. Standard restructured advances attract a provision of 2.75 per cent, as against 0.4 per cent in standard advances.

RBI has also said that short-term loans, (except working capital), if rolled over more than twice, would amount to restructuring.

The move has come at a time when the debt-restructuring exercise has risen significantly over the past two years. Under the corporate debt restructuring (CDR) cell, there were 106 cases of restructured loans, of Rs 76,470 crore, in 2012-13. This was a rise from 50 cases (exposure of around Rs 39,600 crore) the previous year. In addition to the CDR platform, lenders had also gone for substantial recast at the bilateral level during the period.

RBI has also decided that promoters of firms would have to shell out more to get their exposure restructured. Promoters would now have to bring in 20 per cent of the erosion of the net present value, compared with 15 per cent earlier. RBI has suggested, for large exposure, such as those referred to the CDR cell, banks should ask for more promoter contribution.

To ensure promoters' commitment to the recast process, their personal guarantee has been made mandatory and it has been made clear that corporate guarantee cannot replace personal guarantee, except in cases where the promoters of a company are not individuals but other corporate bodies, or where the individual promoters cannot be clearly identified.

Infrastructure project loans that were restructured within two years of the date of commencement of commercial operation (six months for non-infra loans) would not be considered as restructuring. Also, the mere extension of the date of commencement of commercial operation would not be considered restructuring if the revised date is within a year and there is no change in other terms and conditions, except possible shift of the repayment schedule.

RBI has said that reworking of commercial real estate (CRE) loans due to change in date of commencement of commercial operation will not be treated as loan recast. At present, any restructured CRE loan is immediately treated as NPA. Banks will be more flexible in taking exposure to CRE, improving chances for revival.

Libor is not a single price: Tax tribunal

The Income Tax Appellate Tribunal has recently held that Libor is not a single price but an arithmetic mean of rates at which various banks borrow or lend interbank offers. Since it represented different comparable uncontrolled transactions, a taxpayer could take advantage of a margin of "plus or minus five per cent" in fixing the arms length pricing (ALP), the tribunal ruled.

The ruling came in a transfer pricing dispute between DBS and the income-tax department dating back to the assessment year of 2002-03. DBS in India entered into an international transaction of lending foreign currency funds to its branches and the Singapore head office. It had earned interest income from such transactions at varying rates. It followed the comparable uncontrolled price method and benchmarked the rate of interest using Libor.

Since the difference between the rates actually charged and the Libor was less than five per cent, the taxpayer claimed the transactions were at ALP. However, the Transfer Pricing officer rejected the claim for benefit of plus/minus five per cent, as he considered Libor as a single price.

The Tribunal stated that the benefit of plus/minus five per cent "shall extend not only to a situation where more than one price is determined as an ALP but also where only one price is determined as an ALP post amendment by Finance (No.2) Act, 2009".

Bulgari books India return

Luxury firm Bulgari is in the process of finalising a local partner for its proposed re-entry into India. Bulgari had exited India in April 2011 after ending a seven-year tie up with a Mumbai-based firm to run mono-brand stores. This time round, the brand intends to have more control over its operations.

MoEF releases draft policy on forest clearances

The ministry of environment and forests (MoEF) has released a draft policy on inspection, verification, monitoring and overall procedure relating to the grant of forest clearances.

The draft policy envisages establishment of an independent, remote-sensing, satellite-based monitoring system to detect encroachment and unauthorised changes in the approved land use plan, illegal mining on forest land after expiry of the approval under the Forest (Conservation) Act and the progress of concurrent/ final reclamation/ rehabilitation of mined-out area in mining project. Besides, it will detect damage to flora and fauna in the adjoining forests and maintenance of minimum ecological flow in hydel/ irrigation and river valley projects.

Besides, the draft policy, which has been prepared based on the recommendations by a committee headed by the additional director general of forests, suggests self-monitoring by the user agency and in case of non-compliance, keeping the approval accorded under the Forest (Conservation) Act in abeyance within 30 days of the receipt of report by the competent authority.

In respect of proposal involving diversion of forests land above 100 hectare, site inspection be carried out by the MoEF's regional offices. However, the state and union territory governments are required to continue to send a copy of proposals involving diversion of forest land above 40 hectare to the concerned regional office. According to the draft policy, site inspection will be a mandatory exercise for submission and processing of proposals for diversion of forest lands.

Emphasising the need for an institutional mechanism for grant of forest clearance, the draft policy says this is to ensure expeditious implementation of measures stipulated in the approval accorded under Forest Conservation Act to mitigate impact of diversion of forest land on flora, fauna and environment. The annual rate of diversion of forest land for non forest purpose has been reduced to 35,554 hectare per annum from 1.65 lakh hectare per annum After the enactment of Forest Conservation Act, the government approved diversion of 11,55,504 hectare of forest land for non forest purpose with adequate mitigative measures.

Power producers can raise prices to match cost of imported coal

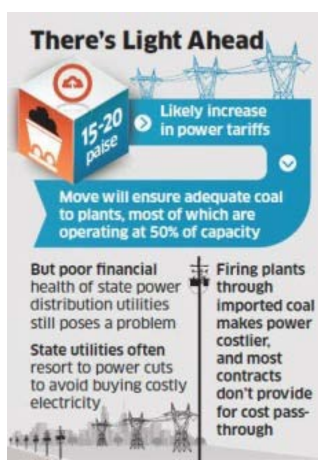
The government has allowed power companies to raise electricity prices to match the increase in cost of imported coal, a move that will benefit 78,000 MW of existing and upcoming plants of producers such as Reliance Power, Tata Power, Adani Power and Lanco Infratech.

The decision aims to ensure adequate coal supply to power plants, most of which are operating at 50% capacity due to lack of fuel. However, the poor financial health of state power distribution utilities, which have Rs. 190,000 crore of accumulated losses, might still pose a problem. State utilities often resort to power cuts to avoid buying costly electricity.

Firing power plants through imported coal makes electricity costlier, and most existing contracts do not provide for cost pass-through.

Coal India has been asked to supply 65% of power projects' requirement from domestic mines. CIL will offer another 15% through imports on a cost-plus basis to willing power producers. Domestic coal supply would go up to 75% by 2016-17. Power producers can also import coal themselves. The higher cost of imported coal would be considered for a pass-through.

The coal ministry will make amendments to the New Coal Distribution Policy to accommodate provisions for the imported fuel while the power ministry will empower central and state power regulators to decide tariff pass-through for imported coal-based generation on a case-to-case basis.



UBS gives up its banking licence

UBS has surrendered its banking licence in India. The decision is driven by a reassessment of business strategy in the face of new regulations and stringent capital rules. UBS, however, will continue to operate its investment banking and equities business under UBS Securities India Pvt. Ltd which operates as a subsidiary of UBS AG. The group may apply for a differentiated banking licence to pursue wealth management business through a representative office.

Exit norms for road developers relaxed

In a move that could help financially stressed infrastructure developers and release much needed equity in the stagnating sector, the government has allowed companies to sell off all stakes in their highway projects. The only condition is that lenders, who have the right to substitute a project's developer, consent to the sale.

Under this policy, the concessionaire wanting to exit would have to approach the lender requesting for a substitution. The lender would then have to seek the NHAI's approval and once both were satisfied, the lender could seek an alternative concessionaire through auctions, tenders or in consultation with the exiting developer.

The policy change would not apply to 28 projects since 2011-12 cases where financial closure has not been achieved. In this case, the normal rule as already provided in the model concession agreement would apply. If NHAI has not been able to fulfil its obligations, the concessionaire can leave the project without any penalty. However, NHAI would have to get all the required clearances or approvals in place before it can find a suitable concessionaire to take over the project.

The draft policy includes the condition that the exiting developer would have to pay a penalty of up to 1% of the total project cost.

Panel identifies 9 sectors for mandatory Indian control

The Arvind Mayaram committee, set up to liberalise the country's foreign direct investment (FDI) policy, has recommended nine sectors be categorised as those where 'Indian ownership' and 'control' will be mandatory. These sectors are FM radio, uplinking news and current affairs, print media (news and current affairs), commodity exchanges, stock exchanges along with depositories and clearing corporation, power exchanges, petroleum and natural gas refining, insurance, defence production, and private security agencies.

The committee has suggested FDI be capped at 49 per cent in nine sectors and clearance (except for defence production and private security agencies) be through the automatic route. It has clarified FDI will not include portfolio investments in two of these sectors - insurance and petroleum & natural gas refining.

To protect India's strategic interests in defence production and private security agencies, foreign investments in these sectors will not be cleared via the automatic route and will be subject to FIPB scrutiny.

In its recommendations, the Mayaram panel has said that despite 51 per cent foreign investment, firms in these sectors will be under Indian ownership and control. The definition of control is being worked out.

PUTTING POLICY IN ORDER
Mayaram panel's key recommendations

Sectors	Current FDI provision/route	Suggested FDI / route
Broadcasting	26% (including FII) / FIPB	49% (including portfolio) / auto
Print media	26% (including FII) / FIPB	49% (including portfolio) / auto
Petroleum & natural gas refining	49% / FIPB nod needed for PSUs	49% / auto
Commexes	49% (23% FII) / FIPB route	49% (including portfolio) / auto
Stock exchanges, depositories, clearing corps	49% (23% FII) / FIPB	49% (including Portfolio) / auto
Power exchanges	49% (23% FII) / FIPB	49% / auto
Insurance	26% / auto	49%/ auto
Defence production	26% / FIPB	49% (including portfolio) / FIPB
Private security agencies	49% / FIPB	49% (including portfolio) / FIPB

Broadcasting: FM Radio, uplinking news & current affairs; Print media: Newspapers & periodicals dealing with news & current affairs

RBI reverses forex relaxation for SEZs

Clamping down on the delays in repatriating foreign exchange earnings, the Reserve Bank of India (RBI) has tightened norms for special economic zones (SEZs), asking them to realise and bring back full value of goods and services to India within a year from the date of export.

RBI's notification lifts a decade-old exemption for these units. There has been no prescription of any time limit for realisation of exports made by the units in SEZs since April 2003. Prior to that, SEZs were required to get their earnings back within one year. Under the SEZ Policy which came into being from 2006, no clear indication was made as to when the value should be realised.

In cases where the foreign importer is also a supplier to the Indian exporter, the Indian exporter is allowed to set off the export receivable against the import payable. In all other cases, the foreign exchange has to be repatriated into India.

In the latest directive, RBI asked authorised dealer banks to ensure that the units located in SEZs realise and repatriate full value of goods, software, services, to India within a period of 12 months from the date of export". Any extension of time beyond the stipulated period would require special approval of RBI on a case-by-case basis.

Buybacks made tougher, FII investment route eased

The Securities and Exchange Board of India (Sebi) has tightened share buyback rules.

Sebi has made it mandatory for companies to buy back at least 50 per cent of the proposed offer size - a penalty of 2.5 per cent will be charged on companies failing to do so. Besides, companies will have to keep 25 per cent of the buyback amount in a separate escrow account and complete their share buybacks within six months, compared with one year earlier. It has been decided that there will be a one-year cooling-off period between two buybacks and companies will not be allowed to carry out any fundraising during this period.

Easier entry, faster registration for foreign institutions

Foreign institutional investors (FIIs) will now be able to enter Indian markets faster and register themselves more quickly with the regulator accepting the recommendations of the Chandrasekhar committee report.

While the time required for registration is supposed to be a week or less, the need for documentation can push it to over six months. The new norms are expected to significantly reduce the time required to do so. The Securities and Exchange Board of India (Sebi) has given its nod to the suggestions of the committee, which include lower Know Your Client (KYC) requirements for entities backed by governments and doing away with the need for registration with the regulator.

Sebi has said FIIs, sub-accounts and qualified foreign investors (QFIs) are to be merged into a new investor class to be termed "foreign portfolio investors" (FPIs). Neither FIIs nor their sub-accounts will require prior registration with the regulator. Instead, they would register themselves directly with designated depository participants (DDPs).

The regulator has also adopted a risk-based approach to KYC, dividing it into three categories on the basis of perceived risk. The first will cover organisations backed by the government, such as sovereign wealth funds. The second will cover regulated entities such as foreign mutual funds, while all other entities would fall in the third category.

Also, it has clearly defined foreign direct investment as any investment that exceeds 10 per cent stake in the company.

Companies can use ECBs to repay FCCBs and for import of services

The Reserve Bank of India has notified the government's proposal to open up the overseas borrowing route for several sectors.

Companies can now tap the ECB or external commercial borrowing route for funds to repay their foreign currency convertible bonds obligations. It has also allowed telecom companies to finance spectrum allocation by way of foreign currency borrowing.

ECB funds can be used by companies to use the overseas debt to pay for import of services, technical know-how and licence fee as part of capital goods imports.

Currently, eligible entities can raise ECB for investments such as import of capital goods, new projects, modernisation/ expansion of existing production units in industrial sector, infrastructure sector and entities in the service sector.

On review, it has been decided to include import of services, technical know-how and payment of licence fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECB.

These modifications to the ECB guidelines have come into force with immediate effect.

India to blacklist tax havens not sharing information

The government is considering blacklisting foreign jurisdictions not sharing information on money parked by Indians in their country, despite a tax information exchange agreement with India.

Blacklisted countries would find it difficult to do business with Indian citizens. Besides a higher tax burden, Indian taxpayers dealing with such jurisdictions would be disallowed deductions in respect of expenditure, allowance or payment made to a financial institution in that country.

Switzerland, United Arab Emirates (UAE), Hong Kong, Singapore, Samoa and Seychelles are some of the countries which have been requested to share information but have not done so effectively. With Switzerland and UAE, India has tax agreements for sharing of information but it has not helped much.

In Budget 2011-12, the finance ministry had inserted Section 94A in the Income Tax Act to notify countries that were not cooperating in information exchange. It said that an Indian resident entering into transactions with such notified territories would be denied certain income tax benefits.

While the provision came into effect from June 2011, the government did not notify the rules in this regard as it just wanted to use this provision “as a threat” and did not want to jeopardise India’s trading relations with any of those countries. It is now planning to notify the rules, and this may be seen as a precursor to blacklisting of one or two non-cooperating countries.

Recently, India approached half a dozen foreign jurisdictions, including Singapore, Samoa, British Virgin Islands, Cayman Islands and Cook Islands, for banking and other financial details of 500 individuals and entities that might have ‘secret offshore accounts’ at those places. The names and listed addresses of 505 India-linked entities were made public after a global expose on secret offshore accounts by US-based rights group, the International Consortium of Investigative Journalists.

India signs Double Taxation Avoidance Agreements (DTAA) and Tax Information Exchange Agreements (TIEA) with other countries to counter the menace of tax evasion and black money stashed in foreign banks by helping in collection of information regarding tax evasion and foreign bank accounts. Proposal to sign DTAAs with Albania, Croatia, Chile, Cuba, Fiji and Latvia is in process. Further, it is proposed to sign TIEAs with Congo, Marshall Islands and Sint Maarten.

DTAAs contain provisions for allocation of taxing rights between source country and resident country; for avoidance of double taxation and for prevention of fiscal evasion. DTAAs contain provisions for exchange of information for tax purpose. TIEAs are agreements for exchange of information for tax purpose.

What happens if a country is blacklisted?

If a taxpayer enters into a deal with a firm in a blacklisted country:

- No deduction would be allowed on payment made to a financial institution in that country
- No deduction would be allowed on any expenditure or allowance (including depreciation)
- Sum received from a person in a notified territory might be treated as income
- Tax would be deducted at the highest rate on the amount paid to a person in the blacklisted country
- All the parties to the transaction would be considered associated enterprises
- Purchase, sale or lease of property would be considered international transactions

Government may levy duty on solar cell imports

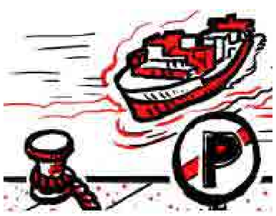
India might impose anti-dumping duty on four major importers of solar cells and modules in the country after listening to the grievances of domestic manufacturers.

Local producers have filed a case last year, alleging that countries such as the US, China, Malaysia and Taiwan were exporting solar equipment to India at “ridiculously low prices” which was “bleeding the local industry”.

With cheap imports flooding the domestic solar market, major players in the Indian solar business have either shut down their manufacturing facilities—like Moser Baer—or have idled their capacity by more than 50%—like Lanco and Indosolar.

According to the Directorate General of Anti-Dumping, ministry of commerce there is sufficient *prima facie* evidence of 'injury' being suffered by the domestic industry caused by dumped imports from the subject countries to justify initiation of an anti-dumping investigation.

Last year, the US imposed 31% antidumping duty on Chinese solar cell imports, going as high as 250% for some companies. US manufacturers had alleged that Chinese products were eating into their local market. Recently, the EU imposed provisional anti-dumping duty of an average 47.6% on Chinese solar cell imports.



RGF to buy Stanton Chase, 2 others

RGF Executive, the search arm of Japanese company Recruit Holdings, has signed a deal worth nearly Rs. 150 crore with Stanton Chase India managing director R Suresh to buy the domestic search firm as well as two other companies owned by him — NuGrid Consulting and Orane Consultants.

The deal comes in the wake of a flurry of acquisitions in the Rs. 25,000-crore Indian recruitment industry marked in recent times by multinationals dropping anchor, small boutique firms struggling to survive the slowdown and clients preferring a one-point contact for hiring.

In India, Stanton Chase works on a franchise model where Suresh is a majority owner and the India franchisee pays a licence fee to Stanton Chase International for using the brand name.

Deals in the recruitment industry kicked off last year when Italy based Gi Group bought a 49% stake from its joint venture (JV) partner Elixir Web Solutions for up to Rs. 100crore. The $2-billion staffing company forayed into India through the JV with the mid-level search and recruitment process outsourcing firm in 2008. The Italian company had a 51% stake in the JV, while 49% belonged to Delhi-based Elixir's MD Vipul Prakash.

In May 2013, Bangalore-based Ikya Human Capital Solutions bought out its residual stake of 49% in subsidiary Magna Infotech and 26% in Avon Facilities Management (earlier Avon Management Services), for Rs. 60 crore.

RBI notifies FDI guidelines on control, transfer of ownership

The Reserve Bank of India (RBI) has notified guidelines for foreign direct investment (FDI), defining control over the company and transfer of ownership. Now, a firm will be said to be controlled by non-residents if it has powers to appoint a majority of the directors.

The notifications of Press notes 2 and 3 of the Department of Industrial Policy and Promotion, which have been pending for the last four years, will be used to ensure that foreign direct investments comply with FDI ceilings and other norms. The press notes provide a definition of 'owned or controlled', a term which is essential to determine whether a company is a foreign firm or a domestic entity. In the aforementioned Press Notes, a company is considered as 'controlled' by resident Indian citizens if the power to appoint a majority of the directors on its board is held by Indian companies and citizens.

On the other hand, a company is considered as 'owned' by resident Indians if more than 50 per cent of the equity is held by the entities in India. Similarly, it would be a foreign company, if over 50 per cent of the equity is held by a non-resident. As regards investments made between February 13, 2009 and the date of publication of the notification, Indian companies are required to inform, within 3 months, the detailed position where the issue of shares or downstream investment is not in conformity with the regulatory framework now being prescribed.

As per the norms, investment in Indian companies can be made by both non-resident as well as resident entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise both resident and non-resident investments.

Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment that is through multi-layered structure.

Nod to privatise Kolkata and Chennai Airports

In a significant move to bring in private operators to run airports, the government has approved privatisation of the Chennai and Kolkata airports, which are currently operated by the Airports Authority of India (AAI).

The inter-ministerial group has decided to privatise the older terminals by bringing in a joint-venture partner to manage operations at the two airports, much in line with what it has done in Delhi and Mumbai. However, the new terminals built by AAI in both cities may be leased out to a private concessionaire at a pre-determined fee.

The airports at Kolkata and Chennai would be the first to go off the block in the government's plans to privatise 15 airports across the country.

The Planning Commission would draft the concession agreements for bids. The other airports on the line for privatisation include Lucknow, Guwahati, Jaipur and Ahmedabad.

Policy for India-made telecom equipment on hold

The government has put in abeyance a policy on giving preferential market access (PMA) to domestically manufactured telecom products on security grounds.

The Cabinet on February 2, 2012, approved a PMA policy. It calls for using indigenously manufactured products to mitigate the threat of cyber espionage in segments that can have security implications.

The Telecom Regulatory Authority of India also recommended an increase in the use of domestically produced equipment in telecom networks due to security reasons. A notification of the department of telecommunications (DoT), on October 30, 2012, said private telecom operators or licensees would have to give preference to domestically manufactured telecom products if there were "security implications" at stake.

The PMA policy has been sharply criticised by foreign companies and trade associations. The US-India Business Council and 37 other business groups and companies from around the world had repeatedly asked the government to rescind the decision and avoid "market-distorting policies".

Also, the GSM telecom services industry body, the Cellular Operators Association of India, had called for a review. DoT had issued a draft notification for the PMA but is yet to come out with the final version.

Domestic telecom equipment makers, on the other hand, have sought the Prime Minister's intervention to help expedite the notification on PMA.

Walmart forces quitters to stay locked into bribery probe pact

Some senior executives who have recently quit the cash-and-carry joint venture between Walmart Stores Inc and Bharti Enterprises have been made to sign an undertaking called "Agreement of Cooperation" and a few of them have been asked to make themselves available before DoJ if required.

The US federal authorities are currently probing allegations of Walmart executives bribing local officials in Mexico. After the Mexico scandal broke out, the retail company has on its own launched internal investigations into the business practices of its local units in a few countries, including India. So far, DoJ or any other US federal agency has not initiated a probe into Walmart India's operations. The undertakings that former executives are being asked to sign appear to be precautionary in nature as the company prepares for the worst-case scenario.

Bharti Walmart has offered to bear all legal expenses in the event of ex-employees being asked to appear before DoJ. Walmart was asking exiting senior executives to cooperate for up to three years after quitting the company and had even offered to pay a fee for each appearance they made for the internal investigations.

The US Foreign Corrupt Practices Act (FCPA) forbids any American citizen or US-listed company from bribing government officials in foreign countries, has gained prominence as American authorities have penalised US firms for FCPA violations in India. In 2012, the US Securities and Exchange Commission (SEC) charged Oracle Corp with FCPA violation when the California-based tech firm's India subsidiary secretly set aside money to make unauthorised payments to local vendors. In 2011, the world's largest producer of premium alcoholic beverage, Diageo, paid $16 million in penalty for bribing government officials in India. In June, five Indian executives of US-based agri business firm Bunge Ltd resigned amid an internal audit to find whether the world's largest oilseed processor's India unit flouted the FCPA.

Excise duty blow to firms selling goods below cost

Companies selling products below manufacturing cost to enhance market penetration will now have to pay excise duty on the normal price (production cost plus profit). The finance ministry decision follows the Supreme Court (SC) ruling of last year that upheld excise demand on sales of carmaker Fiat's discounted Uno brand.

The Central Board of Excise & Customs (CBEC), is finalising safeguards so that there is no blanket application of the SC judgment on all companies. It will clarify that the excise duty would be levied at discounted prices when a product is sold below cost due to a sudden increase in raw material cost or increase in interest rates, or under some government mandate.

Trigger The August 2012 case between Fiat and Excise Dept in which the SC upheld excise duty levy on manufacturing cost (higher than the selling price of the pictured Uno model)
What it means If a product's manufacturing cost is Rs 100 but a company sells it at Rs 80, excise duty will be levied at Rs 100 plus profit (say Rs 10) and the company will have to pay duty on Rs 110 (and not Rs 80)
Repercussion Field officers started sending show cause notices to other auto firms, seeking details of their cost structure and whether the SC ruling could be applied in their cases of excise demand
Reaction Industry was not comfortable sharing cost data for each product; it argued that duty at manufacturing cost would cause undue problems, as goods were already sold at loss
Solution Finance Ministry says it won't amend the law but will provide safeguards, so that it doesn't apply on cases where goods are sold below cost for reasons other than competition

Delhi to plug evasion of taxes on liquor

For the first time in India, a state has adopted technology to purge bureaucratic delays and corruption endemic to the manufacture, distribution and sale of alcohol. The project by the Delhi government to track and tax every bottle of alcohol sold by using barcodes is expected to help reduce revenue leakage and check the sale of illicit liquor.

The two-dimensional barcodes will give a unique identity to each bottle, which can then be tracked from point of origin till it is sold. The project has been in the works from the beginning of last year and in test phase since April. It will go live from the end of September. The project has been implemented for most liquor except for beer, which will also be included by end of September. Because of the high sales volume of beer, manufacturers had requested to exempt beer for an extended period.

Before October, the government also hopes to equip all the retail outlets with necessary scanners required to complete the loop, which starts at the distillery or bottling plant when alcohol is manufactured and bottled.

Besides plugging leakages, the new system is also meant to simplify processes. Typical paperwork, for which manufacturers and distributors needed to go to the Delhi excise office, can now be done online, including paying fees. The online system will reduce the point of contact between the licensee and the department officials, which is one of the main reasons for corruption

Companies Bill passed

The Parliament has passed the much awaited Companies Bill, 2012 to improve the corporate governance and ensure better regulation so as to protect the interest of employees and small investors. The Bill, already approved by the Lok Sabha last year, was passed by the Rajya Sabha by a voice vote.

The new bill, which now needs the President's nod to become law, makes it mandatory for companies to spend on social welfare, empowers investors against frauds committed by promoters, encourages companies to have women directors, and seeks to bring in greater transparency in corporate governance matters such as executive salaries and the role of auditors.

Companies having net worth of Rs 500 crore or more, or turnover of Rs 1000 crore or more or a net profit of Rs 5 crore or more during any financial year will have to contribute 2 percent of their net profit for Corporate Social Responsibility. They will have to constitute a CSR Committee to formulate a CSR policy.

The bill replaces the existing Companies Act, 1956, which has been amended at least 25 times in the past 57 years, with many of its provisions found to be outdated and inadequate.

The Bill was passed by the Lok Sabha more than seven months ago. Since then, its passage in the upper house has been delayed by disruptions in Parliament. It has been almost three years since the submission of first report on the Companies Bill by the Parliamentary Standing Committee on Finance. Pilot said that 96 per cent of the recommendations made by the Parliamentary Committee have been accepted and the Ministry would try to incorporate further suggestions by various stakeholders while formulating the final rules.

Among others, the new Bill provides about three dozen new definitions, including terms such as frauds, promoters, turnover, related parties (to promoters), small companies, associate companies and employee stock options. It provides for a uniform financial year (April-March) for all companies, while the concept of one-person company has been introduced for the benefit of small entrepreneurs. Besides, the new Bill proposes strong checks against fraudulent money-collection activities through issuance of various securities.

The Bill requires auditors to be changed every five years to avoid collusion with the management, while rules would be tightened for appointment of independent directors. To safeguard the interests of small investors, the Bill proposes approval by two-thirds of the public shareholders for deals that involve promoters and related entities.

It has a provision for setting up special courts for speedy trials and stronger steps for transparent corporate governance practices and curbing corporate misdoings. The law also provides for faster winding up of firms as also for speedier clearances to businesses.

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About Chadha & Co.

Chadha & Co. is a law firm based in New Delhi, India, with a strong Corporate and Commercial practice. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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