



INDIA UPDATE

A monthly Newsletter on business intelligence and opportunities in India

OCTOBER 2006



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INDIAN EXPORTS SHOOT UP 37% IN APRIL-SEPTEMBER, 2006 BUT TRADE DEFICIT WIDENS

As per the provisional data released by the Government of India, India's cumulative merchandise exports during the first half of this fiscal (April to September 2006) were US\$59.32 billion. This is 37% higher than the US\$43.22 billion achieved during the corresponding period of last year.

The imports during April-September, 2006 were US\$83.92 billion which shows a growth of 32.06% from US\$63.55 billion during the corresponding period of last year. The Trade deficit during April-September, 2006 has touched \$24.6 billion which is an increase of 21% over \$20.3 billion during the same period last year.

In September 2006, exports were valued at \$10.3 billion, an increase of 41.2% over \$ 7.29 billion in September, 2005. This is the second consecutive month in 2006-07 that the exports have shown an increase of over 40%. In September 2006, imports increased 49% to \$15.63 billion from \$10.48 billion in the same month last year. In a statement, commerce minister Mr.Kamal Nath said that the sustained double-digit growth showed India's exports were on a high growth trajectory and the enhanced export target of \$125 billion for 2006-07 would definitely be met.

Cumulative oil imports during April-September, 2006 have gone up 36.83% at \$28.66 billion as against \$20.94 billion in the same period of last year. The total imports of non-oil products during April-September, 2006 rose 10.98% at \$55.26 billion against \$49.79 billion during the corresponding period of last year. In September 2006, oil imports went up 25.77% to \$5.09 billion as against \$4.04 billion in the same period last year. Non-oil imports in September, 2006 were worth \$10.54 billion, an increase of 24.28% from \$8.48 billion in the same month, last year.

Views of our Economist:

Significant growth of nearly 40% in exports during the first half of the fiscal year clearly indicates that the efforts of the Government to push up exports have been successful. The imports have risen by 32% and the trade deficit has widened to 24.6 billion. The crucial aspect of imports is that oil imports have gone up by 37% and a primary factor for this is increase in oil prices during the last one year. With the softening of crude prices in this month, the proportion of increase in oil imports value could come down if crude prices do not increase from the present levels or if crude prices decrease further. This to a certain extent could reduce the trade deficit. The proportion of increase in imports of capital goods is a welcome sign since this indicates increase in domestic investments which can fuel further growth of the economy.

TIME LIMIT FOR COMPLIANCE WITH TELECOM FDI GUIDELINES EXTENDED BY THREE MONTHS

The Government of India, vide Press Note 5 (2005 Series) dated 3.11.2005, had notified the enhancement of Foreign Direct Investment (FDI) limits in the Telecom Sector subject to specified conditions. In terms of para 4 of the said Press Note, an initial correction time of 4 months from the date of issue of the Press Note was allowed to the existing licensee companies for adherence of the conditions. The correction time was extended from time to time and the last extension was allowed up to 2nd October 2006. The Government has decided to further extend the time period for the telecom service provider companies to comply with the conditions set out in Press Note 5 (2005 Series) by three months, i.e., up to 2nd January 2007.

It is expected that during the three-month period, inter-ministerial discussions would take place to reconcile the differences between the various ministries and then a final proposal would be brought before the Cabinet.

GOVERNMENT TIGHTENS ENTRY BARRIERS FOR NEW AIRLINES

With the airline industry facing huge losses, the Government is planning to put in place a host of entry barriers to permit only serious and financially sound aviation ventures to take off. Under these fresh regulations, Government intends to make it mandatory for all proposed aviation ventures to first tie-up finances, aircraft leasing deals and recruit pilots and engineers before seeking a scheduled airline licence. The Civil Aviation Ministry also plans to hold quarterly reviews of airlines' business plans, which will include checking cash-flow position for the following quarter.

The Civil Aviation Minister Mr. Praful Patel stated that "No longer would airline companies be granted the license and allowed to firm up their business plans. Now, airline companies will have to first firm up their business strategy and do the recruitments, and then seek a licence. This will ensure that only serious players with sound financials will enter the market."

Source: Economic Times

SMALL SCALE UNITS TO GET INTEREST AT 18% ON DUES OVER 45 DAYS FROM CORPORATES

Large enterprises would have to pay an interest rate at 18% on dues of purchases from small scale enterprises. The much-awaited policy decision has become operational with the Micro, Small and Medium Enterprises Development (MSMED) Act coming into effect from October 2, 2006.

Companies will now have to pay three times the bank rate notified by the Reserve Bank of India (which is currently 6%) on their liability. The interest rate charged will be compounded on a monthly basis. Buyers will also have to declare outstanding amounts to Small scale units in their balance sheet as per the Act.

Small scale units can avail of the clause and file their complaints with the micro and small enterprises facilitation council under the ministry of small scale industries (SSI). A separate tribunal will also be set up to resolve disputes. The period of payment of dues on account of purchases has been made 45 days under the new act. However, medium enterprises are not covered under the clause on delayed payments in the act and cannot avail of the facility. This will have considerable impact on a huge number of large and medium scale enterprises that source their components from the small scale sector.

RBI TIGHTENS NORMS FOR LENDING TO REAL ESTATE SECTOR

The Reserve Bank of India's (RBI) has tightened the norms for lending to the real estate sector by asking banks to ensure that credit disbursed is used only for "productive construction activity." This stipulation of RBI means that banks should be cautious and have necessary safeguards in their board-approved policies so that funds lent are not used for any activity connected with speculation in real estate. It has already bracketed home loans as well as loans to SEZs and units in SEZs with real estate exposures.

Banks have been asked to draw up extensive prudential norms for exposure to real estate sector. The norms would encompass ceiling on the total amount of loans to real estate, single/group exposure limits for such loans, margins, security, repayment schedule and availability of supplementary finance. Such a policy is required to be approved by the boards of banks.

RBI has indirectly prevented bank funding for acquisition of land by stipulating a loan disbursement

can be done only after a borrower has obtained permissions in advance from all the concerned authorities for a project. This effectively means the prospective borrower can approach a bank after acquiring land and then getting all the permissions required. The banks are also required to incorporate in their policy on lending to the real estate sector aspects relating to adherence to a national building code (NBC) of the Bureau of Indian Standards.

In addition, Reserve Bank of India has raised the risk weights for capital allocation to 150 basis points on banks' exposure to commercial real estate and home loans above Rs 2 million.

RBI AMENDS SECURITIZATION COMPANIES & RECONSTRUCTION COMPANIES GUIDELINES

The Reserve Bank of India has decided that a Securitisation Company or Reconstruction Company, which has obtained a Certificate of Registration under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should commence business within six months from the date of grant of Certificate of Registration. The RBI may, on an application made by the Securitisation Company or Reconstruction Company, grant extension of time for commencement of business beyond six months, on merits, but in no case, such extension of time shall exceed 12 months from the date of grant of Certificate of Registration. Those Securitisation Companies or Reconstruction Companies which have already obtained a Certificate of Registration from the RBI under Section 3 of the Act and not commenced business till date, shall commence business within a period of six months from the date of the Notification (19th October 2006)

RBI'S CLARIFICATION ON SUBMISSION OF STATUTORY AUDITORS CERTIFICATE REGARDING CONTINUATION OF BUSINESS OF NBFIs

The Reserve Bank of India has pointed out that in terms of circulars issued by it, all Non Banking Financial Companies (NBFCs) are required to submit a certificate from their Statutory Auditors every year to the effect that they continue to undertake the business of NBFIs thereby requiring them to hold the Certificate of Registration (CoR) granted by the Bank under Section 45-IA of the RBI Act, 1934.

In this regard, the RBI has further clarified that the business of non-banking financial institution (NBFIs) means a company engaged in the business of financial institution as contained in Section 45 I(a) of the RBI Act, 1934. For this purpose, the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 and mentioned in brief below may be followed:

The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.

In the case of an existing company which has been granted CoR by the Bank to carry on NBFIs business its business profile may have undergone a change over a period of time. In case of new companies since such companies cannot commence business of NBFIs without obtaining CoR, the Bank grants CoR on the basis of their intention to engage in the business of NBFIs; however such an intention may not have materialised. Hence, it is possible, that there are companies holding the CoR to commence/carry on the business of NBFIs without actually undertaking NBFIs activity. It is for this reason, the RBI has clarified that the submission of Auditor's Certificate in support of commencement/ continuance of the business of NBFIs and fulfilling the criteria of the principal business detailed in Press Release of April 8, 1999 by NBFCs has been prescribed.

RBI NOTIFIES CEILING ON INTEREST RATES ON RUPEE EXPORT CREDIT OF SCHEDULED COMMERCIAL BANKS

The Reserve Bank of India (RBI) has specified that Interest Rates effective from November 1, 2006 to April 30, 2007 will be not exceeding Benchmark Prime Lending Rate (BPLR) minus 2.5 percentage points per annum for the following categories of Export Credit.

Categories of Export Credit

1. Pre-shipment Credit

- Up to 180 days
- Against incentives receivable from Government covered by ECGC Guarantee up to 90 days

2. Post-shipment Credit

- On demand bills for transit period (as specified by FEDAI)
- Usance bills (for total period comprising usance period of export bills, transit period as specified by FEDAI, and grace period, wherever applicable)

(i) Up to 90 days

(ii) Up to 365 days for exporters under the Gold Card Scheme.

- Against incentives receivable from Govt. (covered by ECGC Guarantee) up to 90 days
- Against undrawn balances (up to 90 days)
- Against retention money (for supplies portion only) payable within one year from the date of shipment (up to 90 days)

Since the above are ceiling rates, banks would be free to charge any rate below the ceiling rates. Interest rates for the above-mentioned categories of export credit beyond the tenors as prescribed above are deregulated and banks are free to decide the rate of interest, keeping in view the BPLR and spread guidelines.

AMENDMENTS TO SEBI (DIP) GUIDELINES – LOCK-IN ON PRE-IPO SHARES

In order to make Indian primary market more efficient and transparent, it has been decided to adopt the following policy:

Lock-in on pre-IPO shares before Initial Public Offering (IPO) held by Venture Capital Funds and Foreign Venture Capital Investors

Presently, as per SEBI (DIP) Guidelines, 2000, pre-issue shares of an unlisted company making an Initial Public Offering (IPO) are not required to be locked in, if the same are held by Venture Capital Funds (VCFs) or Foreign Venture Capital Investors (FVCIs) registered with SEBI. It has now been decided to restrict the benefit of this exemption from lock-in to the following:

(i) shares held by VCFs or FVCIs registered with SEBI, for a period of at least one year as on the date of filing draft prospectus with SEBI;

(ii) shares issued to SEBI registered VCFs/ FVCIs upon conversion of convertible instruments during the period of one year prior to the date of filing draft prospectus with SEBI, provided that the period of holding such convertible instruments as fully paid up, together with the period of holding shares resulting from conversion, by the VCFs and FVCIs, is at least one year as on the date of filing the

draft prospectus with SEBI.

Applicability

The amendment regarding lock-in made vide this circular shall be applicable to all offer documents, which are yet to be registered with the Registrar of Companies as on 16th October 2006.

AMENDMENTS TO SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000 - GUIDELINES ON ADVERTISEMENT

The Securities & Exchange Board of India (SEBI) has issued Guidelines on Advertisement regarding pre issue publicity effective from 18th October 2006. The amendments effected by SEBI are given hereunder:

Clause 9.1.14 shall be substituted by the following:

"9.1.14 All public communications and publicity material, including corporate and product advertisements of the issuer company, interviews by its promoters, directors, duly authorized employees or representatives of the issuer company, documentaries about the issuer company or its promoters, periodical reports and press releases, issued or published in any media during the period commencing from the date of the meeting of the Board of Directors of the issuer company in which the public or rights issue, as the case may be, is approved till the date of filing draft offer document with SEBI, shall be consistent with its past practices.

Provided that where such public communication or publicity material is not consistent with the past practices of the issuer company, it shall be prominently displayed or announced in such public communication or publicity material that the issuer company is proposing to make a public or rights issue of securities, as the case may be, in the near future and is in the process of filing a draft offer document with SEBI.

9.1.14A All public communications and publicity material, including corporate and product advertisements of the issuer company, interviews by its promoters, directors, duly authorized employees or representatives of the issuer company, documentaries about the issuer company or its promoters, periodical reports and press releases, issued or published in any media during the period commencing from the date of filing draft offer document with SEBI till the date of allotment of securities offered in the issue, shall comply with the following:

(a) It shall be prominently displayed or announced in such public communication or publicity material that the issuer company is proposing to make a public or rights issue of securities, as the case may be and has filed a draft offer document with SEBI or has filed the Red Herring Prospectus / Prospectus with the Registrar of Companies or the Letter of Offer with the Designated Stock Exchange, as the case may be.

(b) It shall further be stated in such public communication or publicity material that the draft offer document, Red Herring Prospectus or final offer document, as the case may be, is available on SEBI website at www.sebi.gov.in as well as on the Lead Managers' websites <urls to be given>.

(c) Such public communication or publicity material shall contain only factual information and shall not contain projections, estimates, conjectures, etc.

(d) Such public communication or publicity material shall also not contain any information which is extraneous to the draft offer document filed with SEBI or the Red Herring Prospectus / Prospectus filed with the Registrar of Companies or the Letter of Offer filed with Designated Stock Exchange, as the case may be.

9.1.14B The issuer company shall make prompt, true and fair disclosure of all material developments taking place during the period mentioned hereunder, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer company, by issuing public notices in all the

newspapers in which the issuer company had issued pre-issue advertisement under clause 5.6.A:

(a) In case of a fixed price public issues, between the date of filing final prospectus with the Registrar of Companies and the date of allotment of securities offered in the public issue.

(b) In case of a book built issue, between the date of filing the Red Herring Prospectus with the Registrar of Companies and the date of allotment of the securities offered in the issue.

(c) In case of a rights issue, between the date of filing the Letter of Offer with the Designated Stock Exchange and the date of allotment of the securities offered in the rights issue."

Clause 9.1.15 shall be substituted by the following:

"9.1.15 No product advertisement of an issuer company shall contain any reference, directly or indirectly, to the performance of the issuer company during the periods mentioned in clause 9.1.14 and clause 9.1.14A."

SEBI DIRECTIVE ON COMMON KEY PERSONNEL BETWEEN MUTUAL FUNDS & VENTURE CAPITAL FUNDS

In order to avoid conflict of Interest between the activities of Mutual Funds and Venture Capital Funds, SEBI has decided that no Key personnel of a Mutual Fund shall be on the Board of Asset Management Company/Investment Manager/Investment Advisor/Investment Committee of a Venture Capital Fund. Key Personnel of a Mutual Fund includes Chief Executive Officer (whatever his designation may be), Chief Investment Officer, Fund Managers and Head of other departments in an AMC.

The Venture Capital Funds have been advised to confirm compliance of the above to SEBI as early as possible but not later than 2 months from 18 th October 2006.

IRDA GUIDELINES ON FILE-AND-USE REQUIREMENTS FOR GENERAL INSURANCE PRODUCTS

The Insurance Regulatory and Development Authority of India (IRDA) has reviewed the guidelines on file-and-use requirements for general insurance products, wherein it has asked insurers to avoid unprincipled rate cutting in a detariffed regime. These guidelines will come into effect from November 1, 2006.

According to the guidelines, insurers shall not vary the coverage, terms and conditions of covers that are under tariffs till March 31, 2008.

Design and rating of products should be on sound underwriting basis and all product-related literature should be simple and easy to understand. The product should be a genuine insurance product and alternate risk transfer or financial guarantee business will not be accepted.

The pricing of products should be technically justified and margins built into the rates shall be consistent with the experience of the insurer in respect of commission, management expenses, contingencies and profit. Insurer should take necessary steps in ensuring that competition will not lead to unprincipled rate cutting and other improper underwriting practices, the authority has added. Products, which were filed under the earlier file-and-use guidelines, need not be re-filed under the present guidelines unless the insurer has made any changes in the products.

The underwriting policy of the insurer shall be placed before the board of directors, and not merely a committee or sub-committee of the board for their approval.

For the purpose of these guidelines, the products have been classified into class-rated products and individual-rated products. Class-rated products include internal tariff rated products which are standard products that can be sold by any of the offices of the insurer and packaged or customised products which are specially designed for a client. Individual rated products include individual

experience rated products, where the terms of the cover are determined by the actual claims experience of the insured and exposure rated products where the terms are determined by an evaluation of the exposure to loss in respect of the risk concerned.

The IRDA has also set out rules of conduct for brokers in the matter of insurance and reinsurance of general insurance risks, especially those with high sums insured. Based on these rules, once the client has selected the brokers who should be invited to quote terms, all other brokers should withdraw from the market. Where an insurer is approached by a broker to quote terms for a particular account, the insurer should not approach the client directly to quote terms and eliminate the broker.

The placement of reinsurance is entirely within the purview of the insurer and neither the direct broker nor the client can direct the insurer where to place reinsurance and how much to reinsure, the authority has said.

CHILD LABOUR BAN TO BE EFFECTIVE FROM 10 TH OCTOBER 2006

The Government has added employment of children as domestic help or servants at dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts or in other recreational centres to the list of occupations prohibited under the Child Labour (Prohibition and Regulation) Act 1986

MAURITIUS TIGHTENS PROCEDURE FOR ISSUANCE OF TAX RESIDENCY CERTIFICATE

Mauritius has swiftly acted to address issues raised by India on the alleged misuse of the double taxation avoidance agreement (DTAA). The move includes ensuring that all banking transactions are routed through an account in Mauritius. The Mauritius revenue department has issued a circular in this regard. The circular has laid down enhanced procedures for issue of Tax Residency Certificate (TRC) and brief summary of the same are given hereunder:

1. New Companies

All companies holding a Category 1 Global Business Licence ('C1GB Licence') and which are not required to file returns may apply for a TRC, provided they fulfill the requirements of the Circular. Consequently, a newly incorporated company, which will not have an obligation to file returns at the time of its first application for a TRC, will also be eligible for a TRC on the recommendation of the Commission.

2. Applications through Commission

All applications for a TRC from companies holding a C1GB Licence will henceforth be made through the Commission. The Commission will recommend the issue of a TRC if it is satisfied that the undertakings in respect of the following pre-requisites for a TRC have been provided.

Pre-requisite for a Tax Residence Certificate (TRC)

(To be given in the form of undertakings)

(1) The Company shall at all times have at least two Directors resident in Mauritius. The resident directors shall be of appropriate calibre who can exercise independence of mind and judgement.

(2) All meetings of the Board of Directors shall be held, chaired and minuted in Mauritius.

(3) The company shall at all times keep all its accounting records at its registered office in Mauritius.

(4) The company shall ensure that all its banking transactions are channelled through a bank account in Mauritius.

3. Submission of Returns

A company, holding a C1GB Licence, applying for a TRC will have to ensure that all returns of income due for submission as on the date of application have been submitted to the Director General of the MRA. For example, a company which has 31 October as its accounting year end and which makes an

application for a TRC on 5 October, will have to ensure that it has submitted its returns of income related to all past accounting periods ending on 31 October of the immediately preceding year. This requirement will not affect newly incorporated companies.

4. TRC with respect to Specified Tax Treaty

The TRC will be issued pursuant to a Tax Treaty. Accordingly, the application will have to state the Tax Treaty in relation to which a TRC is being applied for. The TRC will be issued on an annual basis. The first TRC will be effective from the date of issue of the C1GB Licence of the company and shall remain valid until the expiry of the validity date of the C1GB Licence. The next and subsequent TRC will be effective and valid from the date of renewal of the C1GB Licence until its expiry.

5. Documentation

All applications to the Director-General of the MRA for a TRC should be made on behalf of the company by its Management Company and should be supported by the following documents:

- A statement showing the Tax Treaty under which the TRC is being applied for
- A statement to the effect that the return of income that the company is required to submit under the ITA has been filed
- Undertakings should be given in accordance with the requirements set out in 2 above and should be signed by any two resident directors and the secretary of the company
- Certified copies of amendments (if any) made to the company's constitution, certified copy of the company's certificate of incorporation and C1GB Licence, certified copy of Board Minutes evidencing resolutions passed to satisfy the requirements given in the annexure

6. Recommending the application to Director General

If the Commission is satisfied that the company has fulfilled the requirements of the Circular and the company is in good standing, the Commission will recommend the application of the TRC to the Director General, MRA.

7. Renewal of TRC

In the case of an application for the renewal of a TRC, the company should certify that the undertakings given at the time of the first application are still being complied with. If the Commission is satisfied that the company has fulfilled the requirements of the Circular, it will recommend the application of the TRC.

8. Revocation of recommendation

The Commission reserves the right to revoke its recommendation if at any time it comes to its knowledge that the company has not fulfilled the requirements of the Circular and the company is in good standing.

9. Pending Applications

Applications which are pending and which have not been processed prior to this Circular will be processed in accordance with the procedure that existed before the issue of this Circular. However, the TRC will be issued in accordance with the recent amendments to the ITA.

CBDT NOTIFIES NEW RETURN FORMS

The Central Board of Direct Taxes (CBDT) has, vide Circular No. 9/2006, dated 10th October 2006, notified the following new return forms for assessment year 2006-07:

(i) Form No. 2F effective from 1st June, 2006. This Form may be used only by assessee being resident individual/ Hindu undivided family (HUF)

- not having income from business or profession or agricultural income or capital gains (except long-

- term capital gains from transactions on which securities transaction tax paid); or
- not claiming relief under section 89 in respect of arrears or advance of salary;
- not owning more than one house property.

(ii) Form No. 1, Form No. 2, Form No. 3, and Form No. 3B effective from 24.7.2006. The details of these forms are as under:

- Form No.1 is a combined form for return of income and return of fringe benefits for companies other than those claiming exemption under section 11;
- Form No.2 is a combined form for return of income and return of fringe benefits for non-corporate assessees

(i) not claiming exemption under section 11, and

(ii) having income from business or profession;

- Form No.3 is a form for return of income for non-corporate assessees not claiming exemption under section 11 and not having income from business or profession;
- Form No.3B is a residual form for return of fringe benefits for the assessees

(i) who are required to furnish the return of income and also the return of fringe benefits but-

- have filed the return of income in Form No. 1 or Form No. 2 or Form No. 2D or Form No. 3A for the Assessment Year 2006-07 before the notification of this Form No. 3B, or
- opts to file the return of income in Form No. 2D

(ii) who are not required to furnish the return of income but are required to furnish the return of fringe benefits.

If a taxpayer intends to file a return for any earlier assessment year he will have to use the old forms.

2. These return forms have been designed to make them amenable for electronic filing. In a case where the taxpayer does not use a digital signature, a two step-procedure has been prescribed for furnishing these forms electronically without digital signature. First step is to transmit the details of the return and schedules thereto electronically (without digital signature) to the designated web-site and thereafter to file a paper Return. The date of the electronic transmission and acknowledgement number given electronically by the Income-tax Department for such transmission has to be filled in the paper return. However, if the return is furnished electronically under the digital signature, it will not be necessary to furnish the paper return.

3. Apart from procedure mentioned in para 2, an assessee may also file, at his option, an e-return in accordance with following schemes:

(i) Electronic Furnishing of Return of Income Scheme, 2004. Under this Scheme, e-return has to be filed through e-Return Intermediary, followed by a paper return. The scheme is applicable to all class of taxpayers who are assessed or assessable to tax at any of the cities specified in Schedule A of the Scheme (i.e. net-worked cities);

(ii) Furnishing of Return of Income Internet Scheme, 2004. Under this Scheme, e-return has to be filed under the digital signature. The scheme is applicable only to individual taxpayers who has income under the head Salaries but does not have any income under the head Profits and gains of business or profession and who are assessed or assessable to tax at any of the cities specified in Schedule A of the Scheme (i.e. net-worked cities);

4. All corporate taxpayers are necessarily required to furnish the return for assessment year 2006-

07 electronically after 24-7-2006. Thus, a company has to necessarily file e-return either under digital signature or in accordance with two step procedure explained in para 2 or in accordance with the Scheme mentioned at para 3(i). However, for other class of taxpayers, it is optional to furnish an e-return.

5. Further, these forms are not to be accompanied by any attachment/ annexure. Taxpayers should not enclose with these return forms any statement showing the computation of income or tax or notes thereto, copies of balance-sheet, profit and loss account or notes thereto, TDS/ TCS certificate, proof of payment of advance tax or self-assessment tax, audit report or any other document.

6. Following clarifications are hereby issued in respect of certain issues arising from furnishing the returns in above mentioned forms:

- The report of audit under section 44AB is not to be attached with the return. It should not be furnished separately also before or after the due date. However, an assessee should get the report of audit from an accountant under said section before the due date of the furnishing of the return and should fill out the relevant columns of these forms on the basis of such report. The assessee should retain the report with himself. It may be furnished in original during the assessment proceedings. No penalty under section 271B shall be initiated or levied for not furnishing the tax audit report on or before the due date. However, if the audit report has not been obtained before the due date, provisions of section 271B shall be attracted.
- While processing the return under section 143(1), the credit for Tax deducted at source (TDS)/ Tax collected at sources (TCS) shall be allowed on the basis of details furnished in the relevant schedules of these returns as if the TDS/ TCS certificates have been filed.
- These returns are not to be accompanied with any other document including any statutory form or report of audit (other than the report under section 92E) which is otherwise required to be furnished before the due date or along with the return for making any claim. The provisions of the law shall be deemed to have been complied with in respect of the requirement of the filing of the attachments or documents or reports along with the return. No penalty shall be initiated/ levied for not furnishing such documents. All these documents should be retained by the taxpayers and be furnished in original during the scrutiny proceedings.
- The report as required under section 92E of the Income-tax Act shall continue to be furnished before the date specified in rule 10E.
- In the case of the old forms, the assessee could enclose documents, furnish reasons and make disclosures in support of claims made by him. However, it is not possible to do so in case of new forms as these are annexure-less. Accordingly, the assessee may, in pursuance to the first notice issued under section 143(2), avail of the opportunity to file documents, furnish reasons and make disclosures in support of various claims made by him in the return filed in new form.
- In case, a return is furnished under digital signature, the date of such furnishing shall be the date of furnishing the return-. In case, a return is furnished under two- step procedure as explained in para 2 or in accordance with the Scheme mentioned at para 3(i), the date of furnishing the e-return will be the date of furnishing the return only if

(a) paper return has been filed within fifteen days from the date of filing the e-return or within one month from the date of issue of this Circular, whichever is later; and

(b) paper return tallies with the e-return.

In case condition in (a) or (b) above is not satisfied, the paper return shall be taken to be the return and date of filing the paper return shall be taken as the date of filing the return.

- The e-Return has to be filed at <http://incometaxindiaefiling.gov.in>. The paper return, if any, in

respect of such e>Returns shall be filed either at separate counter(s) to be set up for this purpose at each local income-tax office (whether on net-work or not) or at designated postal offices.

- It has been brought to the notice of the Board that some taxpayers have filed the returns in the old forms (other than Form No.2D) even after the notification of the new forms. Since, old return forms are invalid returns after the date of notification of new forms, the taxpayers should resubmit the return in new forms in accordance with the new procedure.

7. The returns filed electronically shall be processed on priority basis.

GUIDELINES FOR ISSUE OF PAN TO PERSONS OUTSIDE INDIA & FOREIGN CITIZENS

Following guidelines have been issued to facilitate the allotment of PAN to citizens of India residing outside India, foreign citizens and other persons (like companies/trusts/firms) having no office of their own in India:

I. Citizens of India residing outside India and foreign citizens Service providers shall accept applications from these categories of natural persons (individuals), without insisting on details of a representative assessee. Details of addresses and proofs required for identity and address in such cases will be as per Annexure "A " enclosed

II. Other persons (like companies/trusts/firms) having no office of their own in India: Service providers shall accept applications from these categories of applicants, without insisting on details of a representative assessee. Details of addresses and proofs required for identity and address in such cases will be as per Annexure A enclosed

2. Service providers should advise applicants in the above mentioned categories to clearly indicate the address at which the PAN card and other communication should be sent in column 6 of Form No.49A, and also to invariably mention their email id in column 7 of Form No.49A. Service providers are permitted to charge applicants courier charges for PAN cards required to be delivered abroad, in addition to the application fee of Rs.60 plus applicable service tax. Details of service charges and delivery time shall be put up on the web-sites of the respective service providers

3. Codes 99 and 999999 should be entered for State and PIN fields respectively for the class of PAN applicants not having Indian address. However, actual foreign ZIP / PIN code should be populated in any of the 5 address fields (preferably last) along with the name of the country.

4. Service providers should also place on their respective web-sites the available Assessing Officer (AO) codes of International Taxation Directorate and advise the applicants to mention AO code out of these codes. However, if no AO code is mentioned in the application or the AO code mentioned is other than of International Taxation Directorate, then the first international taxation Assessing Officer of Delhi may be used as default AO code.

5. These guidelines are applicable only for the purpose of allotment of PAN to the categories of persons specified above.

INDIVIDUAL

PARTICULARS	Indian Citizen - At the time of application for PAN located		Foreign Citizen - At the time of application for PAN located:		Other persons having no office in India
	Outside India	In India	Outside India	In India	
ID Proof	Copy of passport	Copy of passport	Copy of passport, duly attested by Indian Embassy in the country where applicant is located.		Copy of registration certificate of their country duly attested by Indian Embassy in the country where applicant is located.
Address Proof	Copy of passport; copy of bank account in country of residence	Copy of passport ; copy of bank account in India	Copy of passport, duly attested by Indian Embassy in the country where applicant is located; copy of bank account in country of residence		NA
Photo	Applicant	Applicant	Applicant		NA
Signature	Applicant	Applicant	Applicant		Authorized Signatory
Representative Assessee	Not required	Not required	Not required		Not required

CBEC CLARIFICATION ON AIR TRAVEL SERVICE TAX

The Central Board of Excise and Customs (CBEC) has said that international airlines will have to collect service tax on the total value of the ticket from business and first class passengers travelling from India to their final destination even if they are travelling through an intermediate city.

The Board of Airline Representatives (BAR), the apex body of international airlines here, had sought several clarifications on the implementation of the service tax, including whether the tax would be applied on the entire cost of the air ticket or on part of the journey. Clarifying the Government's position, an official notification issued by CBEC states that in case the international journey also includes travel on a domestic sector as part of the journey then also the service tax would be levied on the entire value of the ticket. The CBEC has argued that the service tax is payable even when the ticket is issued abroad for an international journey commencing from India as the place where the

ticket has been purchased is of no relevance or consequence to determine the tax payable.

The CBEC, however, has clarified that service tax would not be levied in one case — if the journey begins outside India and is completed outside the country although the passenger may transit through India.

APEX COURT: ORDERS JOINT TRIAL OF BORROWING COMPANY'S DAMAGE SUITS

The Supreme Court has ruled that there has to be joint trial of damage suits filed by borrowing companies. There cannot be two separate trials of such suits. Similarly, the recovery suits filed by banks or lending institutions must also have joint trials. Also, both these have to be in the Debt Recovery Tribunal. The apex court has sought to discourage such suits being filed in civil courts by the borrowing companies.

The verdict came in as an appeal by the State Bank of India that had sought transfer of the case to the Tribunal where it had filed a suit for the recovery of the loan amount from a company. The company, however, had moved a civil court claiming damages alleging the failure of the bank to fulfill its obligations under the cash-credit facility in time and in a meaningful manner.

The Supreme Court held that for zeroing in on the evidence aspects to arrive at a conclusion ordered that the joint trial of such claims and counter-claims is mandatory. The court set aside the order of the Court of Subordinate Judge, Patna, which had refused the request of the State Bank of India seeking transfer of the damage suit of the company to the Tribunal for a joint trial of the case and consequently overturned the ruling of the Patna high court which had approved the decision of the Subordinate Judge.

Citing reasons for a joint trial, the court said that accounts of the bank would have to be scrutinized not only to ascertain the sum but also to determine as to when and in what manner the cash credit was disbursed. "Of course, the evidence will have to be taken on whether there was any violation of conditions or lapses on part of the bank in fulfilling its obligations causing damage to the company. At least a part of the evidence will be common," said the Apex Court. The court also ruled out the transfer of the suit from the Debt Recovery Tribunal to the civil court saying that it will defeat the purpose for which such body was established. Therefore, the only alternative would be to transfer the suit to the Tribunal which has been created by an Act. The claim of the company is in essence a claim for set off or a counter-claim that could be tried by the Tribunal in view of the amended Section 19 of the Act, said the court.

Source: Economic Times

APEX COURT: CONTRACT EMPLOYEES ENTITLED TO BENEFIT OF GRATUITY EITHER UNDER STATUTE OR CONTRACT

The Supreme Court has ruled that the workmen cannot have the liberty to avail both the beneficial aspects of the Payment of Gratuity Act and the contract of their employment and they have to choose either of them. A bench of the Apex Court ruled that while interpreting even a beneficial part of the statute like, Payment of Gratuity Act, either contract has to be given effect to or the statute". The apex court bench has set aside the order passed by the Deputy Commissioner of Labour which was affirmed by the Bombay high court.

The Supreme Court has allowed the appeal of Beed District Central Co-Operative Bank Ltd. which had its own gratuity scheme which was a part of its terms of contract. According to that the rate of gratuity was determined at 26 days' wage for every completed year of service with maximum amount of Rs. 2.5 lakhs. However, according to the Payment of Gratuity Act, 1972 the rate of Gratuity was determined at the rate of 15 days' salary for every completed year of service with ceiling of amount Rs. 2.5 lakhs which was later raised to 3.5 lakhs by an amendment in 1998. It was given a retrospective effect from Sep. 1997.

Some retired workmen of the Bank claimed that they were entitled to the benefits of both the scheme as also the ceiling fixed under 1998 Act. Turning down their claim, the court said that in event the amount is calculated at the rate of 26 days' salary for every completed year of service, vis-a-vis 15 days' salary thereof, the tenure of an employee similarly situated will vary.

Source: Economic Times

APEX COURT: EXPENSES ON ISSUANCE OF BONUS SHARES ALLOWABLE AS A DEDUCTION

The Supreme Court has put an end to a prolonged legal controversy over the nature of expenses incurred by a company in issuing bonus shares by ruling that the same is allowable as revenue expenditure. The court agreed with the earlier rulings of Bombay and Calcutta high courts on the same issue and held that the views of Gujarat and Andhra Pradesh high courts were erroneous.

The judgment has been given in the case of dispute between General Insurance Corporation (GIC) and Commissioner of Income Tax, Mumbai. GIC had filed a return on income of over for the year 1991-92 but the Income Tax department had disallowed a few expenses including an amount of Rs. 14 million incurred towards the stamp duty and registration fees, paid in connection with the increase in authorized share capital. GIC had, during the accounting year, incurred expenditure separately for the increase of its authorized share capital and the issue of bonus shares. The Income Tax department contended that the expenses incurred were towards a capital asset of a durable nature for the acquisition of a capital asset and, therefore could only be attributable towards the capital expenditure.

The Supreme Court while holding that such expenditure is of revenue nature, observed that issuance of bonus shares does not result in any inflow of fresh funds or increase in the capital employed and the capital employed remains the same. Issuance of bonus shares by capitalization of reserves is merely a reallocation of company's fund and does not add to inflow of fresh funds or increase in the capital employed.

HC: ASCERTAIN TAX DUES AND ENSURE AMALGAMATION NOT USED AS A DEVICE TO EVADE TAXES

Amalgamation of companies as a tax avoidance/evasion device is going to be difficult as a consequence of a recent order by the company court of the Bombay High Court. The order directs the regional director of the Department of Company Affairs to inform the court of taxes payable by merging companies, namely income tax, sales tax, excise and customs duties.

The court directed that the regional director should ascertain that the statutory dues to the Government are cleared by the company in question, before certifying that the amalgamation scheme is not prejudicial to the shareholders, creditors and the public at large. The order was passed during the hearing of an amalgamation scheme filed by Pratibha Fabrics with Kamdar Fab. The court said the regional director should investigate and apply his mind before writing his report, as liability of a company may cease to exist along with its identity.

The court further observed that the regional director had been filing reports that looked exactly like computer printouts of earlier ones, mostly approving the amalgamation proposal after stating that he had vetted the report of registrar of companies (ROC), replies of the amalgamating firms and the relevant provisions of the Companies Act.

However, the companies proposing the merger scheme sought a review of the court order. During the hearing of the review petition, the counsel for the Central Government, cited a Supreme Court order in the Mihir Mafatlal case. The apex court had held earlier that amalgamation can be rejected

on the ground of a tax fraud. Being informed of the tax dues is the only way for the court to verify whether the proposal for amalgamation is a genuine corporate exercise or a device to evade taxes due to the government. The counsel for amalgamating companies argued that all schemes of amalgamation provide for shifting liabilities and there is no basis for the apprehension that Government may lose taxes there from. The company court subsequently disposed of the review application.

Source: Economic Times

ITAT: SPEED MONEY IS UNDISCLOSED INCOME

The Income of Tax Appellate Tribunal (ITAT) has ruled that improper payments or "speed money" are to be treated as "undisclosed income". The assessee company, Ganges Lines Pvt Ltd acts as agents of foreign shipping companies. During a search operation, it was found that the company had been paying "speed money" to various government officials and public authorities, accounted in accounts under heads like miscellaneous, expenses, sundry expenses. Foreign travel expenses of its directors were also held to be personal in nature and accordingly, the same was also treated as undisclosed income.

The CIT(A) upheld the "speed money" payment as undisclosed income of the assessee company. But he deleted the addition of foreign travel expenses from the computation of undisclosed income. When the case reached ITAT, it observed that speed money payments were accounted for by the assessee under normal heads of expenses like 'sundry expenses', 'miscellaneous expenses'. Also, the real nature and character of those payments of "speed money" was brought to the notice in the course of search. Therefore, debiting those expenses in the books of account and claiming as expenses and reflecting in the statements accompanying regular returns does not exonerate the assessee from the lapse of "undisclosed". Hence the said addition is confirmed. The foreign travel expenses of the director were already available in regular books of account and scrutinized by the AO. Also, no fresh materials were collected in the course of search operations for the same. Thus, foreign travel expenses could not be treated as part of undisclosed income.

E-FILING OF CASES IN THE APEX COURT BECOMES A REALTY

From October 2, 2006, any advocate-on-record or petitioner-in-person can file a case in the Supreme Court here through the Internet, from anywhere in the world. This is the first time e-filing is being made available by any court in the country. The Court will be accessible through the website www.supremecourtindia.nic.in.

According to the Registrar-General of the Court, a user-friendly programme with interactive features has been prepared by the National Informatics Centre. Step-by-step guidelines for e-filing are available on the website. E-filing will obviate the need for a visit to the Supreme Court for filing and re-filing.

The court fee and printing charges at Rs. 1.50 a page can be paid through any visa/master credit/debit card. No additional court fee or processing fee will have to be paid for e-filing.

The Supreme Court Registry will give every advocate-on-record a password, which can be changed subsequently by accessing the website. As the advocate alone knows the password, it will not be possible for any other person to file any matter or document on his or her behalf. The petitioner-in-person will, however, have to submit proof of his or her identity such as ration card/PAN card/identity card/driving licence/voter ID card by scanning the document.

The text can be typed on the computer whereas documents including affidavits and "vakalatnamas" can be submitted by scanning them.

Counter/rejoinder/fresh applications/caveat/additional documents can also be filed through the

website.

Further, it will be possible to make any modification before the matter is finally submitted to the Court. Any defects found by the Supreme Court Registry will be communicated to the person filing the case and he can remove them.

SNAPSHOT OF GLOBAL MARKETS - SEPTEMBER 2006

KEY STOCK MARKET INDICES

INDEX	OPENING (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING (30/09/2006)
BSE SENSEX	11699.57	12485.17	11445.19	12454.42
S&P CNX NIFTY	3414.00	3603.70	3328.45	3588.40
DOW JONES I.A.	11427.41	11782.49	11273.89	11679.07
NASDAQ COMPOSITE	2194.56	2273.30	2147.44	2258.43
FTSE 100	5906.10	6002.90	5820.00	5960.80
NIKKEI	16072.81	16414.94	15513.87	16127.58

PRICES OF KEY COMMODITIES (US\$)

COMMODITY	OPENING (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING (30/09/2006)
GOLD - SPOT (NY)	625.80	640.00	570.50	598.70
SILVER - SPOT (NY)	12.83	13.25	10.45	11.41
PLATINUM - SPOT(NY)	1236.00	1265.00	1118.00	1134.00
COPPER (COMEX)	3.425	3.687	3.290	3.461
ALUMINIUM (COMEX)	1.141	1.233	1.115	1.188
BRENT CRUDE (IPE)	72.40	72.40	60.52	63.86
NYMEX CRUDE OIL	72.30	72.45	60.65	64.15

KEY GLOBAL CURRENCY RATES AGAINST USD

CURRENCY	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE
EURO/USD	1.283	1.288	1.263	1.269
GBP/USD	1.905	1.909	1.860	1.873
USD/JPY	117.24	118.27	115.56	117.93
USD/INR	46.61	46.61	45.71	45.99

MAJOR CURRENCIES AGAINST INR

CURRENCY	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
USD/INR	46.61	46.61	45.71	45.99
EURO/INR	59.81	59.94	58.31	58.35
GBP/INR	88.81	88.96	86.10	86.12
JPY/INR	39.77	39.97	39.00	39.00

INTEREST RATES

MIBOR

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
OVERNIGHT	6.10	7.17	6.10	7.17
14 DAY	6.39	6.65	6.36	6.64
1-MONTH	6.67	6.94	6.67	6.86
3-MONTH	7.22	7.39	7.19	7.21

LIBOR - USD

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
1-MONTH	5.33	5.33	5.32	5.32
3-MONTH	5.39	5.39	5.36	5.37
6-MONTH	5.42	5.44	5.36	5.37
12-MONTH	5.39	5.46	5.28	5.30

LIBOR - EURO

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
1-MONTH	3.10	3.27	3.10	3.27
3-MONTH	3.27	3.42	3.27	3.42
6-MONTH	3.46	3.59	3.46	3.57
12-MONTH	3.64	3.76	3.64	3.71

LIBOR - GBP

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
1-MONTH	3.10	3.27	3.10	3.27
3-MONTH	3.27	3.42	3.27	3.42
6-MONTH	3.46	3.59	3.46	3.57
12-MONTH	3.64	3.76	3.64	3.71

LIBOR - JPY

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
1-MONTH	0.359	0.385	0.359	0.380
3-MONTH	0.405	0.428	0.405	0.426
6-MONTH	0.455	0.488	0.455	0.486
12-MONTH	0.576	0.576	0.605	0.598

US T-BILL

PERIOD	OPENING RATE (01/09/2006)	HIGHEST IN SEPTEMBER 2006	LOWEST IN SEPTEMBER 2006	CLOSING RATE (30/09/2006)
1-MONTH	0.359	0.385	0.359	0.380
3-MONTH	0.405	0.428	0.405	0.426
6-MONTH	0.455	0.488	0.455	0.486
12-MONTH	0.576	0.576	0.605	0.598

KEY CENTRAL BANK RATES

	31/08/2006	1 MONTH PRIOR	3 MONTH PRIOR	6 MONTH PRIOR	1 YEAR PRIOR
US FEDERAL RESERVE FUNDS RATE	5.25	5.25	5.00	4.75	4.00
EUROPEAN CENTRAL BANK RATE	3.00	2.75	2.50	2.25	2.00
BANK OF ENGLAND RATE	4.75	4.50	4.50	4.50	4.50
RESERVE BANK OF INDIA - BANK RATE	6.00	6.00	6.00	6.00	6.00

PRIME RATES

CURRENCY	RATE (30/09/2006)
USD	8.25
EURO	4.00
GBP	4.75
JPY	1.63
INR	10.25 to 10.75

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