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Disclaimer: - CS Update contains government notifications, case laws and contributions received from the members. Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.
FORTHCOMING PROGRAMMES

Two Day National Workshop

On

Diligence Report for Banks

BANGALORE CHAPTER
&
CENTRE FOR CORPORATE RESEARCH & TRAINING
Announces
National Workshop on
“Diligence Report for Banks”

Introduction
The Reserve Bank of India vide its Circular No. DBOD NO. BP. BC. 46/08.12.001/2008-09 dated September 19, 2008 advised all the scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification (DILIGENCE REPORT) by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in the aforesaid notification. RBI has subsequently vide Circular No. RBI/2008-2009-313/DBOD No. B.P. BC 94/08.12.001/2008-2009 dated December 08, 2008 revised and streamlined the formats. Subsequently RBI vide its Circular No. UBD.PCBNo. 36/13.05.000/2008-09 dated January 21, 2009 advised all Primary Urban Co-operative Banks to also obtain Diligence Report. The formats have been revised vide RBI Circular No. DBOD.No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009. ICSI-SIRC & ICSI – CCRT is organising this program to familiarise the Members with the intricacies and responsibilities in issuing the Diligence Report.

Days, Dates & Timings
Friday & Saturday, 12th & 13th June, 2009 09.30 am to 05.30 pm

Venue
The Atria Hotel, #1, Palace Road, Bangalore - 560 001

Proposed Coverage
- Scope of Diligence Report
- Applicability
- Format of Diligence Report
- Methodology
- Professional Responsibility
- Compliance Inputs & Checklists
- Competency Building and other aspects

Faculty
Eminent faculty with practical exposure to the subjects will address the participants of the Workshop.

Fees
Rs. 2,500.00 per person for Members of ICSI (to cover the cost of Backgrounder worth Rs.499/-, Tea, Lunch & other organisational expenses.)

Programme Director, CS Sudhir Babu C. Programme Co-ordinator, CS Nagendra Rao
Council Member, The ICSI, Chairman, Bangalore Chapter of ICSI Ph. : 27620315 (040); Mob: 9985523338 Ph. : 26509004 (080); Mob : 9945175787 Email : csbassociates27@yahoo.com; sudhirinc@yahoo.com
Email: nagendradrao@gmail.com; nagendra_d_rao@yahoo.co.in

Members attending the Workshop would be entitled to 8 Programme Credit Hours and a Certificate of Participation. Limited Seats. Prior registration is desirable due to Limited Seats.

For details please contact:
For Registration: Fee may be paid through cash/local cheque/DD payable at Bangalore in favour of “Bangalore Chapter of SIRC of the ICSI” and sent to: The Executive Officer, Bangalore Chapter of ICSI, “Sheriff Chambers”, III Floor, Rear Block, 14, Cunningham Road, Bangalore – 560 052.
The Reserve Bank of India vide its Circular No. DBOD NO. BP. BC. 46/08.12.001/2008-09 dated September 19, 2008 advised all scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification (DILIGENCE REPORT) by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in the aforesaid notification. RBI has subsequently vide Circular No. RBI/2008-2009-313/DBOD No. B.P. BC 94/08.12.001/ 2008-2009 dated December 08, 2008 revised and streamlined the formats. Subsequently RBI vide its Circular No. UBD.PCB.No. 36/13.05.000/2008-09 dated January 21, 2009 advised all Primary Urban Cooperative Banks to also obtain Diligence Report. The formats have been revised vide RBI Circular No. DBOD. No. BP.BC.110/08.12.001/2008-09 dated February 10, 2009. ICSI-Jaipur Chapter & ICSI– CCRT are jointly organising this program to familiarise the Members with the intricacies and responsibilities in issuing the Diligence Report.

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Members attending the Workshop would be entitled to 8 Programme Credit Hours and a Certificate of Participation. Limited Seats. Prior registration is desirable due to Limited Seats.

For details please contact:

Jaipur Chapter of ICSI / ICSI-CCRT

ICSI HOUSE, A-5/A, Institutional Area, Jhalana Doongari, Plot No.101, Sector-15, Institutional Area, CBD Belapur Jaipur – 302 004 ; tel: 0141-2707236/2707736 Navi Mumbai– 400 614 ; tel: 022-27577814/15 email: jaipur@icsi.edu; jaipuricsi@gmail.com
fax: 022-2757438 ; email: ccrt@icsi.edu; ccrt@vsnl.com

For Registration: Fee may be paid through cash/local cheque/DD payable at Jaipur in favour of “Jaipur Chapter of NIRC of the ICSI” and sent to: The Executive Officer, Jaipur Chapter of ICSI, A-5/A, Institutional Area, Jhalana Doongari, Jaipur – 302 004
MCA updates:

Shri Salman Khursid assumed charge as Minister of State (I/C) Ministry of Corporate Affairs
Corporate Affairs Notification No. S.O.1324(E) dated 22 May 2009

Date of enforcement for Limited Liability Partnership Rules 2009

In pursuance of clause (b) of sub-rule (2) of Rule 1 of the Limited Liability Partnership Rules, 2009, made under Section 79 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby appoints the 31st May, 2009 as the date on which Rule 32 and Rule 33 and Rule 38 to Rule 40 of Limited Liability Partnership Rules, 2009 shall come into force.

Sd/-
RenukaKumar,
Jt. Secy.

F.No. 1/1/2009-CL.V

Issued by:
Ministry of Corporate Affairs
New Delhi

Note:- The Limited Liability Partnership Rules, 2009 were published in the Gazette of India, Extraordinary, Part II, Section 3(i) vide No. G.S.R. 229(E), dated 1st April, 2009.

Corporate Affairs Notification No. S.O.1323(E) dated 22 May 2009

Date of enforcement of various sections of Limited Liability Partnership Act 2008

In exercise of the powers conferred by sub-section (3) of section 1 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby appoints the 31st day of May, 2009 as the date on which the provisions of sections 55 to sections 58, Second Schedule, Third Schedule and Fourth Schedule of the said Act shall come into force.

Sd/-
RenukaKumar,
Jt. Secy.

F.No. 1/1/2009-CL.V

Issued by:
Ministry of Corporate Affairs
New Delhi
FEMA Updates

RBI Notification No. G.S.R.349(E) dated 22 May 2009

Amendments of FEMA (Current Account Transactions) Rules 2000

In exercise of the powers conferred by sub-section (1) and clause (a) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in consultation with the Reserve Bank, the Central Government, having considered it necessary in the public interest, hereby makes the following further amendments in the Foreign Exchange Management (Current Account Transactions) Rules, 2000, namely:

1. Short title and commencement:

(1) These rules may be called the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2009.

(2) They shall come into force on such date as specified in the provisions of these rules.

2. In the Foreign Exchange Management (Current Account Transactions) Rules, 2000, in Schedule III,

(1) (i) for item numbers 2 and 3 and the entries relating thereto, the following item numbers and the entries shall be substituted, namely:

"2. Release of exchange exceeding US$ 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan).

3. Gift remittance exceeding US$ 5,000 per financial year per remitter or donor other than resident individual;"

(ii) the amendments made to item numbers 2 and 3 shall be deemed to have come into force on the 20th December, 2006.

(2) for item 4 and the entries relating thereto, the following item number and the entries shall be substituted, namely:

"4. (i) Donation exceeding US$ 5,000 per financial year per remitter or donor other than resident individual;

(ii) Donations by corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US$ 5,000,000, whichever is less, for,-

(a) creation of Chairs in reputed educational institutes;

(b) to funds (not being an investment fund) promoted by educational institutes; and

(c) to a technical institution or body or association in the field of activity of the donor company."
Explanation:- For the purposes of these item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the Liberalised Remittance Scheme.

(3) for item number 15 and the entries relating thereto, the following item number and the entries shall be substituted, namely:-

"15. Remittances exceeding US$ 10,000,000 per project, for any consultancy services in respect of infrastructure projects and US$ 1,000,000 per project for other consultancy services procured from outside India.

Explanation:- For the purposes of this item number 'infrastructure project' is those related to:-

(i) Power,

(ii) Telecommunication,

(iii) Railways,

(iv) Roads including bridges,

(v) Sea port and airport,

(vi) Industrial parks, and

(vii) Urban infrastructure (water supply, sanitation and sewage)".

(4) after item number 16 and the entries relating thereto, the following item number and the entries shall be inserted, namely:-

"17 Remittances exceeding five per cent of the investment brought into India or US$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."

(5) the amendments made to item numbers 4, 15 and 17 shall be deemed to have come into force on the 30th April, 2007.

Sd/-

K.P. Krishnan,

Jt. Secy.

F.No. 1/1/EC/2004

Issued by:

Ministry of Finance
Department of Economic Affairs
New Delhi

Explanatory Memorandum

It is clarified that no person shall be adversely affected as a result of retrospective effect being given to such rules.

The principal rules were published in the Gazette of India, Extraordinary Part II, section 3(i) vide number G.S.R. 381(E), dated the 3rd May, 2000 and subsequently amended vide:-
(a) G.S.R. 663(E), dated the 9th August, 2000,

(b) S.O. 301(E), dated the 30th March, 2001,

(c) G.S.R. 442, dated the 22nd October, 2002,

(d) G.S.R 831(E), dated the 17th December, 2002,

(e) G.S.R. 33(E), dated the 15th January, 2003,

(f) G.S.R. 397(E), dated the 1st May, 2003,

(g) G.S.R. 731(E), dated the 5th September, 2003,

(h) G.S.R. 849(E), dated the 27th October, 2003,

(i) G.S.R. 608(E), dated the 13th September, 2004,

(j) G.S.R. 512(E), dated the 27th July, 2005 and

(k) G.S.R. 412(E), dated the 10th July, 2006.
MINISTRY OF COMMERCE & INDUSTRY Updates
No.B-11/3/2008-SEZ
Government of India
Ministry of Commerce and Industry
(Department of Commerce)
... Udyog Bhawan, New Delhi
Dated the 27th May 2009

OFFICE MEMORANDUM
...

To

The Development Commissioner SEZ & Chairperson, Approval Committee (All Special Economic Zones)

Sub: Procurement of used capital goods from DTA by SEZ Units.

Sir/Madam,

As you are aware the Department of Revenue, in order to regulate shifting of existing businesses from DTA to SEZs to avail of the direct tax exemption on the export income, substituted subsection (4) of Section 10AA of Income Tax Act as below:

"(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:

(i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence: Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

Explanation: The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section."

Relevant extract from Section 80IA referred to in the new subsection are as below:

Explanations to sub-section (3) of Section 80 IA :

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or lant previously used for any purpose, if the following conditions are fulfilled, namely :

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and
(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

3. Keeping in view the provisions that exist in Section 10AA of the Income Tax Act, 1961 to deal with tax related issues in case of previously used Capital Goods, in terms of the provisions of sub-section (8) of Section 15 of the Special Economic Zones Act, 2005, it is hereby prescribed that while granting any approval for setting up new units in any SEZ, the Approval Committee or the Development Commissioner, as the case may be, shall ensure that procurement of second hand capital goods shall be allowed only in terms of the provisions of sub-section (4) of Section 10AA read with Explanation 1 & 2 to sub-section (3) of Section 80 IA of the Income Tax Act, 1961. For this purpose, it has been decided to prescribe the following procedure for the guidance of the units in the SEZs:

(i) The units intending to move second hand capital goods in DTA should furnish details as prescribed in the enclosed annexure and must obtain prior approval of the Development Commissioner before such movement. No second hand capital goods will be allowed to be moved into the Zone without prior approval from the Development Commissioner.

(ii) While computing the value of the used/second hand capital goods sought to be transferred into the Zone from DTA, including from an EOU, EHTP/STP/BTP unit, within the Zone or from any other Zone, the depreciation rates stipulated as per the provisions of Income Tax Act and Rules made thereunder will be adopted for arriving at the depreciated value of such second hand capital goods intended to be moved into the Zone.

(iii) It should be ensured by the Unit that the sum total of S. No. 5 & 6 of the enclosed annexure shall not exceed 20% of the sum total of S. Nos 3 & 4 of the annexure at any given point of time. However, the units can shift used/second hand capital goods valuing more than 20% in which case they will not be entitled to benefits under the Income Tax Act.

(iv) For each transfer of used/second hand capital goods from the DTA into the zone the unit has to compute the values as mentioned above and indicate at the relevant S. Nos of the enclosed annexure.

(v) The details of such procurement of used/second hand Capital goods from DTA (including from an EOU, EHTP/STP/BTP unit) should be clearly mentioned in the Annual Performance Report submitted by the unit.

(vi) The limitation of 20% of the value of used/capital goods Capital goods that can move into the zone would not be applicable in respect of capital goods moved to DTA under Rule 50 of the SEZ Rules, 2006.

4. These instructions are issued in supersession of Instruction No. 8 issued vide this Department’s O.M. No. F1/6/2006-SEZ dated 12th October 2007.

5. Please acknowledge the receipt of this communication the contents of which may please be brought to the notice of all concerned including Zones, Units and Members of Approval Committee.

(T. Srinidhi)
Director
Telefax: 23063265
Application for procurement of used capital goods from DTA (including from an EOU/EHTP/STP/BTP unit)

(1) Name of the unit:

(2) Date of Commencement of:
  Commercial production

(3) Value of the installed Capital goods:
  (Imported) (New & used/second hand)

(4) Value of the installed Capital goods:
  (Procured from DTA) – (New)

(5) Value of the installed Capital goods:
  (Procured from DTA) – (used/second hand)

(6) Value of the Capital Goods:
  proposed to be procured from
  DTA – (used/second hand)

We hereby declare that this procurement of the above mentioned second hand capital goods is strictly in terms of the provisions of sub-section (4) of Section 10AA read with explanation 1 & 2 to sub-section (4) of section 10AA read with explanation 1 & 2 to sub-section (3) of section 80 IA of the Income Tax Act 1961.

SIGNATURE OF THE UNIT

AUTHORIZED SIGNATORY