



Mysore Chapter

eMagazine

Edition 104

September 2012

Happy
Ganesha Festival!



Mysore Chapter
adjudged the
BEST CHAPTER
for the year 2011

Role of the CFO in CG, **4**
Transparency and CSR

Break the Fast Business or **6**
be the Breakfast of Hungrier Businesses

GXG Markets:
Emerging European Capital Exchange **7**



**E- Magazine from
The Mysore Chapter of the
Institute of Company Secretaries
of India**

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Message from Chairperson



*Dear Members and
Students of CS fraternity,*

*The festive season is back and I wish you all a very happy
Gowri Ganesh festival.*

*Mysore Chapter has been adjudged as the Best in its
category for the year 2011. Sincere thanks to every one who
contributed their might in reaching this height!*

*Since January 2011, I've been enjoying the privilege of
reaching you all through this newsletter and I'm indeed
overwhelmed by the response received from all of you to this
newsletter of ours. After being the Chairperson of this small
chapter of SIRC for the past one and a half years, I've handed
over the baton to **CS. Badrinarayan S** who shall be leading the
Mysore Chapter along with his team of young members. I am
sure that under his able leadership, Mysore chapter will reach
new heights in the coming years.*

*I wholeheartedly thank you all for the support given to us
during my tenure as a chairperson of Mysore Chapter and for
giving me an opportunity to render my services to this great
Institute.*

*Yours in CS fraternity,
CS. Srilatha T G*

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Activity Report – August 2012



Mysore Chapter adjudged the BEST CHAPTER for the year 2011

Mysore Chapter has been adjudged as the Best Chapter for the year 2011 under the C Grade Category. The award would be presented to the Chapter on 04th October 2012 at the inauguration function of the 40th National Convention of Company Secretaries to be held at Pune.

Chapter was adjudged as “the Best” in its grade for the year 2007 and 2009 as well.

2011 was the year when Chapter could achieve own premises for its activities. The construction of the premises was successfully completed during the year and was inaugurated on 17th December 2011.

Congratulations to CS. Srilatha who led the Chapter during the year 2011 as the Chairperson. Special thanks to CS. Anshuman, past Chairman of the Mysore Chapter, for his strong ‘on ground’ support for major activities of the Chapter.

Thanks for the blessings and guidance from senior members like CS. Sabareesan and CS. D D Bhat!

Congratulations to the whole team for putting their might in reaching this height!

Celebration of Independence Day:

Mysore Chapter celebrated the 66th Independence Day at the Chapter’s Premises. The program began by Flag Hoisting by CS. Srilatha T G, Chairperson of the Chapter and CS. D D Bhat, Senior member and Past Chairman of the Chapter followed by singing of the National Anthem. CS. D D Bhat addressed the students and members on the occasion and Ms. Archana, Executive Program Student sang patriotic songs. Ms. Lakshmi , Professional Program Student, anchored the program.

Seminar on Derivatives and Portfolio Management:

A seminar on Derivatives and Portfolio Management was organized on 15th August 2012. Mr. Akhil Rao, Financial Economics Graduate from the University of California was the Resource Person. He gave a detailed insight as to Derivatives and Portfolio Management with practical examples.

The program was coordinated by Ms. Lakshmi and was concluded by vote of Thanks by CS. Ajay Madaiah, Treasurer of the Chapter.



From the Readers' Desk...

I acknowledge receipt of your wonderful e-magazine for August 2012 and I heartily reciprocate your Greetings and good wishes for HAPPY INDEPENDENCE DAY.

The Independence Day reminds me that we, as professional should have complete independence on our professional responsibility and should not be dependent on others or guided by the dictates of those in power, particularly with reference to matters where our professional judgment is required.

The E-MAGAZINE has been wonderfully compiled with many useful articles, and it is as good as our CHARTERED SECRETARY. God bless the team for the dedication with which they work to continue in their mission.

I really enjoy reading every month's magazine and anxiously wait to see it. The "Words worth millions" is really worth BILLIONS - not just Millions.

Incidentally, I would like to state that the BOARD's POWERS given on page 12 just misses out one important point, i.e. Board's Power to Borrow Moneys Otherwise than on Debentures – Sec. 292 (1) (c). This power is equally important for the regular function of a CS in employment. Bank borrowings and fresh loans or facilities sanctioned by banks or proposed to be availed from banks needs BOARD RESOLUTIONS TO BE PASSED IN A MEETING OF THE BOARD.

I really admire the hard work that must be going in from you as chairperson and the other editorial team in compiling much useful information for the benefit of our members and students. I wish you and your team all the best.

FCS Shanmugam R.S.
CFO & CS, Sambandam Spinning Mills Ltd., Salem

As usual your e magazines are so good and value packed. I always consider mysore chapter not as best chapter but as a MODEL CHAPTER. Keep it going...

K. Muthu Samy
JM ACS Associates, Coimbatore

Heartiest congratulations for creating leaders and coming out with wonderful monthly bulletin. My best wishes and congratulations to all team members,

CS Prakash K. Pandya
Mumbai

Hi, good to know you guys are so active. I look forward to meeting you / interacting with you. I am not a CS but have been associated with the western region chapter as a speaker/resource person when I was in Mumbai.

M R Prasanna,
Corporate Laws Consultant, Bangalore

Regulatory News updates

Government announces 51% FDI in multi-brand retail, 49% in Aviation

The Cabinet on Friday decided to operationalise 51 per cent FDI in multi-brand retail but left it to the State Governments to allow setting up of such stores. The Cabinet has also cleared FDI in aviation and broadcast sectors. (Times of India)

This decision means that global airlines can now invest up to 49 per cent in the aviation sector. Previous FDI rules allowed foreign entities other than airlines to own, directly or indirectly, an equity stake of up to 49 per cent in Indian carriers. Relaxing FDI norms in aviation is expected to help provide much-needed cash flow to India's bleeding private airlines. It is also expected to result in technology upgradation as well. (Google News)



CCI appoints six law firms for representation

Competition Commission of India has appointed its first formal panel of external legal advisers and following six firms to represent the regulator in various jurisdictions: Advaya Legal for Mumbai, Verus Advocates and Canpisce & Co for Delhi, Fox Mandal & Co for Kolkata, KNG Partners for Nagpur and Lexus Partners for Kerala for representation.

Supreme Court starts hearing on Novartis' patent case

The Supreme Court started the final hearing on Tuesday the keenly-watched case filed by pharma MNC Novartis seeking a patent on its cancer drug, Glivec in India. Public health experts termed the case as a final bid to undermine a key public health safeguard in Indian patent law specifically designed to prevent drug companies from abusive patenting practices which keep medicine prices high. ([Click for More Details](#))

Role of the CFO

In Corporate Governance, Transparency and CSR



Prakash Hegde

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Prof. Justin O'Brien, renowned journalist spoke of the need to shift from government to governance, to accountability, to responsibility, and finally to integrity, a process which requires inter-disciplinary collaboration and an application of behavioural economics. He argued that only by embedding integrity through design can the inevitable gaps in any new regulatory framework be adequately resolved.

As the fallout of the financial crisis continues to devastate the real economy, the design of effective and flexible regulatory and corporate governance, transparency and social responsibility rules, principles and norms has become a global policy imperative.

As a key member in the top rung of management, CFO must be actively involved in and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered and alignment with the organization's financial strategy. To achieve success in any organization the three pronged program in good governance, transparent practices and Social Responsibility policies play a crucial role.



Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders. Transparency is nothing but an openness and truthfulness that the Company follows in the financial world when dealing with disclosures of governance practices and timely release of the true and fair information about the performance of the organisation.

Transparency in all Corporate Actions stems from pro-active attitude of management in spreading relevant information amongst the constituents of the organization. Augmenting such Transparency in the organization is possible by involvement of all in sharing financial data, strategies, best practices, goals and objectives. Flow of information through appropriate communication, at all levels within the organization helps to a great extent in understanding the corporate issues and pave for healthy resolving of intricate problems. History of Management voices precedents, where the best organizational breakthroughs were cause of transparent actions.

It is harder to establish a connection between codified ethics and practical actions than to track compliance on governance or accounting systems. But ethics can be reasonably seen intangible, yet powerful, catalyst and supporter of compliance.

Social Responsibility policies drive the organization into an orbit beyond corporate stakeholders as a “voluntary and conscientious pay-back” concept to society. It is harder to establish a connection between codified ethics and practical actions than to track compliance on governance or accounting systems. But ethics can be reasonably seen intangible, yet powerful, catalyst and supporter of compliance. Ensuring sound ethical practices requires participation-and even leadership-from all ranks within an organisation. It is assumed that CFO occupies a focal point of that leadership. CFO should take utmost care and proactive action in encouraging the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim should be to align as best as humanly possible the interest of individuals, corporations and society at large.

Corporate Governance is administered in an organization through statutory compulsions on the one hand, professionalism and ethics on the other. There are methods which usher in implementation of Corporate Governance policies in an organization. Involvement of top echelons of organization in implementation, administering and monitoring the same is key to the success of Corporate Governance objectives.

Now, Corporate Social Responsibility (CSR) is becoming increasingly important to businesses nationally and internationally. As globalization accelerates and large corporations serve as global providers, these corporations have progressively required the benefits providing the CSR programs in their various locations. CSR is often interchangeably used as a corporate citizenship and is used as a framework for measuring an organisation’s performance against economic, social and environmental parameters. Any CSR program is directed by sustainable actions of the corporation in the allied arenas of business. A CFO should advise the management in chalking out programs, which act as catalyst to the main business of the Organisation like generation of clean energy to ensure that there is no carbon foot print viz., Wind and Solar Energy, Community Education wherein free education can be sponsored to the society at the bottom of the pyramid.

A foresighted CFO, can contribute to the betterment by creating a synergy of ethics, a cohesive society and a sustainable economy where markets, labour, and communities are able to function well and blend together.

IT FOR CORPORATE PROFESSIONALS



WORDWEB PRO



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WordWeb is a comprehensive one-click English thesaurus and dictionary for Windows. Wordweb is feature-rich software that does much more than a paper dictionary or thesaurus. WordWeb is truly a Word Web, each set of synonyms is linked to other related sets. It can be used to look up words from almost any program, showing definitions, synonyms and related words. It includes pronunciations and usage examples, and has helpful spelling and sounds-like links.

If you are looking for a particular part of speech you can click on the Noun, Verb, Adjective or Adverb buttons to show only the relevant synonyms and related words. To look at a particular sense you can click on the sense number.

Browsing around related words is simple: click on the tabs for synonyms, antonyms, parts, part of, types, type of, similar, see also, and anagrams. To see the definition for one of the related words double-click on the word. You can also use the back and forward buttons.

Related words also have "+" and "-" buttons to be more or less specific. For example if you look at the similar words, maybe you'd like to see words that are more loosely similar: you can do this by pressing the "+" button, and go back again by pressing the "-" button.

In addition to using the comprehensive English dictionary and thesaurus supplied, if you are online you can also search your choice of web references. Each reference is on a separate tabbed page for easy cross-referencing. The list of tabs can be customized to use your favorite references. Wikipedia and some online dictionaries are installed by default. You can download the tool free of cost from <http://wordweb.info/free/>

Break the Fast Business or be the Breakfast of Hungrier Businesses



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From time immemorial, the fables have been the bed time favourites and are known for their wit and wisdom. One such fable is the story of a deer and a lion. The story goes thus:

"Every morning a lion wakes up. It knows it must run faster than the slowest deer or it will starve to death"

It doesn't matter if you are a lion or a deer. When the sun comes up you'd better be running. Irrespective of whether your business is that of a deer or the Lion, the only thing is that one has to be faster than anything else in business parlance or the survival of your business is at stake.

This concept is more relevant in recent times especially when the business environment is flooded with competition. One has to be on the lookout every moment and adapt the changes. Time and tide (and technologies) wait for none. The world embraces technology within no time and one cannot afford to sit back and watch the show.

When alarm clocks were invented, no one ever imagined that this can have a competition, even when alarms were embedded in wrist watches. But now, a mobile phone does more than an alarm clock. Where did they go?

The e-Mails rendered writing letters a redundant procedure. There is a hue and cry from learned professors that the younger generation will forget the "art of writing letters" and wonder at the absurd spellings used in SMSes that has become the order of the day. But now, no escape!

"Time and tide (and technologies) wait for none. The world embraces technology within no time and one cannot afford to sit back and watch the show."

Similarly, one did not imagine that the travelling business can be hit hard with technology. With the advent of video conferencing and low cost teleconferencing, business partners communicate via the electronic media instead of spending time and money for commuting from one place to other.

Earlier the films were preferred as people could spare about 3 hours as opposed to 8 hour long one day cricket matches and 5 day long test cricket. Now with the 20-20 format, the time consumed by cricket is shrunk to match the time required to watch a movie. Even the multiplexes are offering lucrative options to watch cricket live on a 70 MM screen.



Kodak did not adapt to digital photography, but stuck to its traditional format of click and print photography. As a result it had to face severe competition from its digital counterparts and sit on a huge pile of debts. There is no denying of the fact that a digital photo cannot match the printed photo and neither can video conferencing give the same satisfaction of a physical meeting. But, when the concept of "saving time and finances" is considered, video conference meetings and digital photography takes prominence.

The key words are competition, technology and uncertainty. Strategize in the right manner and grab the opportunity. An opportunity missed will render the business obsolete. Treat every day as your last and live it up. Do only that which is required to emphasize the survival and stay afloat.

GXG Markets

Emerging European Capital Exchange



CS. Amar Kakaria ACS, ACA, ACWA

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The GXG Markets is a Danish legal entity duly authorized by Finanstilsynet (FSA), the Danish Financial Supervisory Authority. GXG Markets has been specifically designed to provide SMEs with a more competitive market environment, utilizing proven and robust trading systems. It has been operational for more than a decade and successfully serving companies across different industries and locations.

In recent years, it has become increasingly difficult for small and medium sized enterprises to obtain expansion capital from traditional financing routes. Hence, the need for a market platform dedicated to the needs of the global SMEs has become even more relevant. GXG firmly believes in the potential of smaller companies and is keen to help them grow. It intends to even go so far as to claim that smaller companies are the future – the way out of poverty and the road to prosperity.

GXG wants to help in making the journey fair and safe by providing an honest, financial arena for growing companies where they also can choose between different levels of regulations and price. This provides the market with greater transparency, faster transaction reporting and also eliminates the wider gap between the buying and selling price.

GXG Markets helps the companies to get listed without being subjected to red tape and high legal costs. GXG provides three-tier solutions for companies who are willing to access financial markets:

1. The GXG OTC: It is designed for smaller companies who wish to access capital markets without changing

GXG caters to the needs of a market platform dedicated to the SME's. It offers a facility to trade in shares of SMEs directly at matched bargains, in real time, without any requirement for prices to be set by the market makers.

their existing corporate structure. It is even possible for companies to gain access to the GXG OTC share trading facility while retaining their private limited company status. Information about companies on OTC platform is restricted to professional investors and existing shareholders and hence, companies can further raise funds privately without making any public disclosures.

2. The GXG MTF: It is a multilateral trading facility and companies are required to comply with UK GAAP. However, they need not submit a prospectus with FSA and hence, cost of listing is substantially reduced. Companies need to be operating as a PLC at the time of listing and must have a market capitalization of £ 1 Mn. Due to better access and higher visibility, companies listed on GXG MTF can attract investment from wider pool of investors.
3. The GXG Regulated Market: It is an EU regulated market which is considered 'full market' and therefore, has highest level of regulations and companies have to submit prospectus to FSA for review at least 30 days prior to listing. They have to comply with IFRS reporting standards and also have to make timely disclosures to public. Companies need to be operating as a PLC at the time of listing and must have a market capitalization of £ 5 Mn.

All 3 platforms are subject to matched bargain trading facility as well as real-time live trading.

Following is the comparative analysis among all 3 types of markets:

Requirement of	GXG OTC	GXG MTF	GXG Regulated
PLC Status	Not Required	Yes	Yes
GAAP	Not Required	UK GAAP	IFRS
Filing of Prospectus	Not Required	Not Required	Yes
Eligibility for Electronic Settlement	Recommended	Yes	Yes
Market Capitalisation	Not Required	£ 1 Mn	£ 5 Mn
Advisor Requirements	No advisor required	Advisor required	Sponsor required
Minimum Time for Listing	2 Weeks	1 Month	3 Months

Investors can buy and sell through regulated brokers who have direct market access to Tellus, the electronic trading platform owned and operated by GXG Global Group Exchange AB. Trades are cleared and settled as per given schedule. In contrast to other SME Exchanges, GXG provides an access to the order book depth for each of the markets to its registered brokers in order to have higher transparency. Information about scrips listed on GXG Markets can be accessed by the investors across the globe through Thomson Reuters as well as Bloomberg.

GXG Markets is built with good intentions and designed to turn those intentions into better money for everyone who is interested in the future of small and medium-sized companies. Around 40 companies in Europe have already tapped GXG Markets until now and many others are in pipeline. It may be a good idea for growing Indian companies who plan to get listed on AIM, London to explore this new alternative and get themselves listed at a much cheaper cost without compromising on the quality of investors.

The climate is changing and earth is warming up! All of us agree that something has to be done to control the climate change and earth warming. The rapid climate change and accelerating global warming risks human security and also the bio-diversity, which in turn results in major adverse changes on earth. Here is a website www.bestglobalwarmingarticles.com which educates the people about the causes of global warming, steps to reduce it and few other eco-friendly measures to protect our earth.

One can get useful educative articles about:

- Alternative Energy
- Bio Fuel
- Natural Gas
- Causes of Global Warming
- Climate Change
- Effects of Global Warming
- Energy Efficient Home Designs
- Energy Efficient Home Mortgages - EEM
- Grants
- Energy Efficient Homes
- Global Warming
- Global Warming & Energy Savings
- Global Warming & Energy Conservation
- Global Warming & Energy STAR
- Global Warming & the Environment
- Global Warming Articles
- Global Warming Solutions
- Green Building
- Pollution
- Recycling
- Solar Energy
- Tax Credits
- Wind Power

It is very much important to bring awareness among the public about the global warming which is increasing in alarming speed. This website will contribute to protect our planet and the wonderful bio-diversity. Let us join our hands and protect our **Mother Earth**.

IPR & Protection Against Unfair Competition



Viral Shrinath Tripathi

ACS, LL.M (IPR), PGDIRPM & B.COM

Company Secretary

Gateway Technolabs Private Limited, Ahmadabad

Free and fair competition between enterprises is the best means of Consumer Protection. Therefore It is necessary to enforce Unfair Competition law to supplement the intellectual property laws.

Protection against unfair competition has been recognized as one of the main objectives of intellectual property system. It does not grant exclusive rights to the owners with respect to the subject concerned, like in the case of patents, trademarks, etc. In fact, it prohibits any act of competition that is contrary to honest practices in industrial or commercial matters, referred to as "unfair competition".

The acts of unfair competition not only adversely affect the competitors, which tend to lose their customers and market share; but also affect consumers as they are likely to be misinformed and misled and tend to suffer economic and personal prejudice.

The following acts of unfair competition are closely related to IP and are directly relevant to consumer protection:-

- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor
- indications or allegations the use of which in trade is liable to mislead the public as to the nature,

manufacturing process, characteristics, suitability for their purpose or quantity, of the goods.

Whatever form unfair competition may take, it is in the interest of the honest and legitimate entrepreneur, the consumer and the public at large that they should be prevented from it as early and as effectively as possible. Free and fair competition between enterprises is considered to be the best means of satisfying supply and demand in the economy as well as of serving the interests of consumers and economy as a whole. This stimulates innovation and productivity and leads to the optimum allocation of resources in the economy; reduces costs and improves quality; as well as accelerates economic growth and development.

Hence, in India, the Government has formulated a Competition Policy which protects the interests of consumers and producers by promoting and sustaining a fair competition.

Further, fair play in the market place cannot be ensured only by the protection of industrial property rights. A wide range of unfair acts,

such as misleading advertising, violation of trade secrets, etc., are usually not dealt with by specific laws on intellectual property.

Thus, it is necessary to enforce Unfair Competition law to supplement the intellectual property laws and to grant fair protection to consumers.



Living Room.....

KNOW AND MANAGE CLAY BALLS!



A man was exploring caves by the seashore. In one of the caves he found a canvas bag with a bunch of hardened clay balls. It was like someone had rolled clay balls and left them out in the sun to bake. They didn't look like much, but they intrigued the man so he took the bag out of the cave with him.

As he strolled along the beach, he would throw the clay balls one at a time out into the ocean as far as he could. He thought little about it until he dropped one of the balls and it cracked open on a rock. Inside was a beautiful, precious stone. Excited the man started breaking open the remaining clay balls. Each contained a similar treasure.

He found thousands of dollars worth of jewels in the 20 or so clay balls he had left. Then it struck him. He had been on the beach a long time. He had thrown maybe 50 or 60 of the clay balls with their hidden treasure into the ocean waves. Instead of thousands of dollars in treasure, he could have taken home tens of thousands, but he just threw it away.

It's like that with people. We look at someone, maybe even ourselves, and we see the external clay vessel. It doesn't look like much from the outside. It isn't always beautiful or sparkling so we discount it. We see that person as less important than someone more beautiful or stylish or well known or wealthy. But we have not taken the time to find the treasure hidden inside that person. Let's take time to see the brilliant shining gem inside!

<http://magicinthewoods.com/clayballs.htm>



**Words worth
Millions**

"To give real service, you must add something which cannot be bought or measured with money"

- ***Bharata Ratna Mokshagundam Visvesvaraya***

Engineer of India, Born on 15th Sept 1860



Compilation:
CS. Ajaay Madaiah, Mysore

Debt Recovery Tribunal (DRT)

Keeping in line with the international trends on helping financial institutions recover their bad Debt quickly and efficiently, the Government of India has constituted 33 DRTs and 5 Debt Recovery Appellate Tribunals (DRATs) across the country. The DRT are located across the country. Some cities have more than one DRT located therein. New Delhi and Mumbai have three DRT. Chennai and Kolkata have two DRT each.

After the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SRFAESI Act or SRFAESIA in short) borrowers could become first applicants before the DRT. Earlier only lenders could be applicants.

The DRT are fully empowered to pass comprehensive orders like in Civil Courts. The Tribunal can hear cross suits, counter claims and allow set offs. However, they cannot hear claims of damages or deficiency of services or breach of contract or criminal negligence on the part of the lenders. DRT can appoint Receivers, Commissioners, pass Ex-parte orders, ad-interim orders, interim orders apart from powers to review its own decision and hear appeals against orders passed by the Recovery Officers of the Tribunal.

Did you know?

Service Tax on Commission/Sitting fees paid to Non Whole time Directors:

Service Tax on Commission/Sitting fees paid to Non Whole time Directors:

Under the negative list regime of Service Tax it has been a task for the assessee to identify the services to consider for payment of Service tax. Ministry of Corporate affairs had issued Circular vide no 24/2012 clarifying that, when the company by paying service tax on the sitting fees / commission payable to Non whole time directors the remuneration limit prompts for prior approval of Central Government Company need not go for Central Government approval under Section 309 and 310 of Companies Act, 1956.

With the services sector now accounting for 60 per cent of the gross domestic product, the Finance Ministry has set a target of Rs.1.24 lakh Crores for service tax collection during 2012-13. This is significantly higher than the Rs.97,000 Crores mopped up during the previous fiscal.



Pick of the month

When an Association is illegal?

By Virtue of Section 11 of the Companies Act 1956, a company, association or partnership consisting of more than 20 persons (10 in case of Banking business) formed for the purpose of carrying on any business for gain becomes illegal, unless the same is registered as a company under the Companies Act, 1956. This law is in order to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies so that persons dealing with them will not know with whom they are contracting. However, the aforesaid section is not applicable to the business carried by the Joint Family or two or more joint families.



Compiled by:

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Bangalore



CA. Ashit Shah, Team Genicon, CS. Kasturi S.,
Mumbai Chennai Bangalore



Income tax

TP Study to be based on functionally comparable companies

Assessee provided market support services to its parent company. Mumbai ITAT has held that companies which are functionally not comparable cannot be used in the Transfer Pricing Study even if it is accepted by TPO.

DCIT vs MCI COM India Pvt Ltd., 2012-TII-ITAT-DEL-TP

FTS - More beneficial provisions of treaty to apply

ITAT Mumbai has held that more beneficial provisions of India-Canada treaty would apply and TDS need not be deducted on payments made towards installation charges as per Art 12(5) of the Treaty.

DCIT vs Dodsall P Ltd ITA No. 2624/Mum-2006 order dated 29-08-2012

Sec 10A in essence an exemption provision

Assessee had profit in EPZ unit and loss in non-EPZ unit. He claimed deduction under Sec 10A on profits of EPZ unit and carried forward the loss of other unit. High Court of Delhi held that Sec 10A in essence an exemption provision and loss in non-EPZ unit cannot be set-off against profit in EPZ unit

CIT vs TEI Technologies P Ltd ITA No. 347/2011 Del HC order dt 27-08-12

CBDT notifies Rules to Advance Pricing Agreements (APAs)

Central Board of Direct Taxes (CBDT) has notified the detailed scheme entailing the procedure, form and manner for availing the benefits of APA.

Notification No. 36/2012 [F.No.133/5/2012-SO (TPL)]/SO 2005(E), dated August 30, 2012

Report to be obtained u/s 115JC

The Finance Act, 2012 by way of amendment to Sec 115JC had extended alternate minimum tax (AMT) on persons other than Limited Liability Partnerships (LLP), whose total income exceeds INR 2,000,000. AMT at the rate 18.5% (base rate) of the adjusted total income is extended to any person (other than a company) claiming deduction in respect of certain incomes under Part C to Chapter VI-A (except section 80P) or section 10AA (deduction in respect of profits of SEZ units) if the regular income tax payable is less than the AMT. The Form for obtaining the report (Form 29C) has now been notified.

Notification 34 dated August 27, 2012

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Service Tax:

Indirect Tax Ombudsman Guidelines, 2011

CBEC would be setting up the institution of 'Indirect Tax Ombudsman' at Delhi, Mumbai, Chennai, Kolkata, Bangalore, Ahmedabad and Lucknow to enable resolutions of complaints relating to grievances against Customs, Central Excise and Service Tax Department and facilitating settlement of such complaints with satisfaction of the complainant. The procedure and guidelines can be accessed at the following:

<http://www.cbec.gov.in/it-ombud/it-ombudsman-idx.htm>

Public Notice No. 1/2012, dated August 21, 2012

Applicability of ST on vocational education courses

CBEC has clarified that Service Tax is not applicable on vocational education / training / skill development courses (in short VEC) provided by an institution of the Government or a local authority. In case where VEC is provided by an institution as an independent entity in the form of society or any other similar body it is clarified that service tax applicability will have to be determined in accordance with either subclause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994 (Negative List).

Circular No. 164/15/2012-ST dated August 28, 2012

Non-payment of ST on commission paid to the agent located abroad - invoking reverse charge mechanism

Held that as the appellant has paid service tax after issuance of the SCN the assessee's are liable to get the refund as the appellants are exporter, if they have paid the service tax they will get service tax paid by them by way of refund creating a situation of revenue-neutrality - invoking the provisions of Section 80 and waive penalty under Section 76 against the appellant is thus warranted - in favour of assessee.

L.S. Mills Ltd. Versus Commissioner of Central Excise, Madurai, Dated: 22-08-2012, ST/140/12

Customs:

Verification mechanism and monitoring of export obligation under duty exemption/ reward Schemes- reg.

Board has decided to prescribe that when address verifications or Installation Certificate verifications are requested by the Customs authorities in respect of EPCG authorizations, the Central Excise authorities should include, in their verification, a check of the periodical utility bills (containing the address) as

one of the means enabling verification of installation/ operation/ licensee premises.

Circular No. 25 /2012-Customs Dated: 6th September, 2012

Making E-payment of Customs duty mandatory-regarding:

It has been decided to make e-payment of duty mandatory for importers registered under Accredited Clients Programme and importers paying customs duty of one lakh rupees or more per Bill of Entry with effect from 17.09.2012.

Circular No.24/2012-Customs dated 5th September, 2012.

CENTRAL EXCISE:

Disallowance on Cenvat credit for default documents:

Invoice in the name of registered office was used for multiple claims by the appellant for it is various units: Held that the appeal is remanded back to the adjudicating authority to call for an affidavit from the appellant stating clearly that the present claim in this appeal is the only claim against the invoice concerned existed in the name of registered office and no multiple claim has been made or shall be made in respect of the same invoice and there should be specific statement in the affidavit that for any loss of Revenue in future in respect of the same invoice the appellant shall indemnify Revenue.

*M/s. Advance Valve Pvt. Ltd. Versus CCE, NOIDA, dated 23-08-2012
Central Excise Appeal No. 2374 of 2012-SM*

Cenvat Credit for discharging the deemed liability

Held that the Cenvat Credit availed on manufacturing activity can be utilized for discharging the deemed liability on commission paid to foreign agents under Business Auxiliary Services as decided in Commissioner, Central Excise Commissionerate. Versus M/s Nahar Fibres [2010 (8) TMI 766 - PUNJAB AND HARYANA HIGH COURT] - in favour of assessee.

M/s. Shree Rajasthan Syntex Ltd. Versus CCE, Jaipur-II, Dated: 23-08-2012, Central Excise Appeal No. 3362/2010-SM

FEMA

Foreign investment by Qualified Foreign Investors (QFIs)

It has now been decided to allow QFIs to hedge their currency risk on account of their permissible investments (in equity and debt instruments), as per the details given in the Annex to the circular.

RBI/2012-13/185 A. P. (DIR Series) Circular No. 21 August 31, 2012

External Commercial Borrowings (ECB) Policy

it has been decided:

(a) to enhance the maximum permissible limit of ECB that can be availed of to 75 per cent of the average foreign exchange earnings realized during the immediate past three financial years or 50 per cent of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher;

(b) in case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realized during the past financial year; and

(c) The maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion.

RBI/2012-13/200 A.P. (DIR Series) Circular No. 26 September 11, 2012

E-Magazine from ICSI – Mysore Chapter | Edition – 104; September 2012

Now, Indian Companies can make in WOS and JV in Pakistan subject to prior approval from RBI.

RBI/2012-13/198 A. P. (DIR Series) Circ No. 25 dt, September 07, 2012

Investment from Pakistan: The ministry has decided allow investment from Pakistan with prior approval from FIPB and accordingly issued a press note on this. In line with press note issued by the Ministry, the RBI has issued APDIR Circular on the captioned subject vide APDIR No.16 dated August 22, 2012.

Changes in Annual Performance reporting

The RBI has revised the Annual Performance Reporting by including the two declarations in the report one has to be certified by the Company's official and the other has to be certified by the Statutory Auditor of the Indian Company

APDIR Circular No.15 dated August 21, 2012,

Two way fungibility for Indian Depository Receipts: RBI has decided to allow limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) subject to certain terms and conditions.

APDIR Circular No.19 dated August28, 2012

Non-resident guarantee for non-fund based facilities entered between two resident entities.

Borrowing and lending of Indian Rupees between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the guarantee provided by a person resident outside India, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.

The Reserve Bank has granted general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.

On a review, it has been decided to extend the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC)) entered into between two persons resident in India. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor would continue, as per the existing provisions.

RBI/2012-13/179, A. P. (DIR Series) Circ 20 dated August 29, 2012.

Corporate Law:

With reference to the Gazette Notification No. GSR 534(E) dated 15th July, 2011 whereby companies were exempted from obtaining the approval of the Central Government for payment of remuneration exceeding the limits imposed by the Companies Act, 1956 in respect of the managerial persons not having any interest in the capital of the company and not related to the directors or promoters thereof. It is hereby clarified that any employee of a company holding shares of the company up to 0.5% of paid up share capital thereof under any scheme formulated for allotment of shares to such employees including under Employees' Stock Option Plan or by way of qualification shares are also covered under the category of persons not having any interest in the capital of the company in terms of the Ministry's notification GSR 534(E) dated 14-7-2011.

F. No. 14/11/2012-CL-VII Ministry of Corporate Affairs Dated 16th August, 2012



Delhi HC issues notices to NSE and BSE on Algorithmic trading

The Delhi High Court has issued notices to NSE and BSE on a petition filed by small investors and brokers seeking withdrawal of 'algorithmic' trading from the stock exchanges alleging it to be 'discriminatory' and 'unequal'. It directed the market regulator Securities Exchange Board of India (SEBI), Reserve Bank of India (RBI) and finance secretary to reply on charges made by small investors and brokers. The court order came on a petition filed by Intermediaries and Investor Welfare Association of India, a Delhi-based 260 member strong group of small brokers and retail investors that have sought relief from 'algorithmic' trading allowed by NSE and BSE.

Algorithmic trading, also called automated trading, black-box trading, or algo trading, is the use of electronic platforms for entering trading orders with an algorithm deciding on aspects of the order such as the timing, price, or quantity of the order, or in many cases initiating the order without human intervention. Algorithmic trading is widely used by pension funds, mutual funds, and other buy side (investor driven) institutional traders, to divide large trades into several smaller trades to manage market impact, and risk. Sell side traders, such as market makers and some hedge funds, provide liquidity to the market, generating and executing orders automatically.

A special class of algorithmic trading is "high-frequency trading" (HFT), in which computers make elaborate decisions to initiate orders based on information that is received electronically, before human traders are capable of processing the information they observe. This has resulted in a dramatic change of the market microstructure, particularly in the way liquidity is provided.

China 'bias': US wins WTO case against China

The US has won a case at World Trade Organization (WTO) over Chinese effort to discrimination against its financial services companies. The US Trade Representative, Ron Kirk, said the WTO on Friday adopted the Panel Report finding in favor of the US in dispute regarding China's pervasive discrimination against US suppliers of electronic payment services. The Panel had issued its report on July 16, 2012.

Apple wins lawsuit against Samsung, as jury awards \$1B for patent infringement

Apple Inc. filed its patent infringement lawsuit in April 2011 and engaged legions of the country's highest-paid patent lawyers to demand \$2.5 billion from its top smartphone competitor. Samsung Electronics Co. fired back with its own lawsuit seeking \$399 million. The jury found that several Samsung products illegally used such Apple creations as the "bounce-back" feature when a user scrolls to an end image, and the ability to zoom text

with a finger tap. After a year of scorched-earth litigation, a panel of judges decided that Samsung ripped off the innovative technology used by Apple to create its revolutionary iPhone and iPad. The jury ordered Samsung to pay Apple \$1.05 billion.

WTO to investigate US duties on Indian flat rolled

The World Trade Organization will be looking into the legality of certain countervailing duties the US has placed on imports of Indian carbon hot rolled flat steel. In the month of April 2012, India filed a complaint with the WTO. The US duties are based on a previous US determination that Indian steel producers were given illegal subsidies by paying less for iron ore. Also Friday, the US blocked a request from China asking the WTO to investigate US anti-subsidy actions on 22 Chinese products, including steel pipe and solar panels.

US, EU oppose India's proposed quality regulations for imported toys

The US and EU have opposed India's proposed quality regulations for imported toys, saying the legislation requires disclosure of extensive information by manufacturers. The draft legislation, called Toys and Toy Products Compulsory Registration order, makes it mandatory for imported toys to be tested for toxic chemicals and registered in India before being sold to consumers.

Both the US and the EU have demanded that India should incorporate their suggestions and make the legislation framing process more transparent so that all concerns are addressed.

SC directs Sahara to deposit Rs 17,400 Cr with SEBI

The Supreme Court today directed Sahara Group companies to deposit within three months Rs 17,400 crore with 15 per cent interest with Securities and Exchange Board of India (SEBI). It also directed the SEBI to investigate into the affairs of Sahara Real Estate Corporation and another company belonging to the same group.

The judgment was delivered on an appeal filed by Sahara Real Estate Corporation and another company of the group against the SEBI order debarring the two from the stock exchange. The money to be deposited with SEBI within three months belongs to a large number of investors and is to be refunded to them.