

Insurance Regulatory and Development Authority (“IRDA”) on 15.4.2015 approved the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015 (“Regulations”). The Regulations set out the criteria and conditions for approval and the process for obtaining approval in the event of transfer of shares of insurance companies. As per the regulations IRDA's approval is required to register the transfer of shares of insurance company, in the event such transfer changes substantial holding of transferee i.e. if the transferee's resulting shareholding in the shares of the insurance company is likely to exceed five per cent of its paid up capital or the nominal value of the shares intended to be transferred exceeds one per cent of the paid up equity capital of the insurance company.

The Regulations also prescribe a ceiling on holdings of Indian investors, wherein no shareholder can hold shares exceeding ten per cent of the paid up equity share capital of such insurance company. The Regulations provide that all applications must be made in a prescribed form accompanied by the declaration on beneficial shareholding.

Further, before granting the approval due diligence of the transferee shall be conducted by IRDA. Moreover, Indian promoter's holding in the shares of the company shall be subjected to conditions prescribed by the IRDA, which may include but not limited to a minimum lock in period; infusion of additional capital in proportion of its shareholding and compliance with all regulatory stipulations imposed on the promoters under the IRDA (Registration of Indian Insurance Companies) Regulations, 2000. Share holding of the foreign investment shall be according to the provisions of Indian Insurance Companies (Foreign Investment)

INSIDE THIS ISSUE:

COMPETITION COMMISSION REJECTS K SERA SERA'S COMPLAINT	2
COMPANIES (INCORPORATION) AMENDMENT RULE 2015	2
FULL DEDUCTION UNDER INCOME TAX ACT FOR UPFRONT PAYMENT OF DEBENTURE INTEREST	3
DEPRECIATION ON GAS CYLINDERS	3
MACEDON INDO AUSTRIAN VENTURE (P.) LTD. V. NEW STANDARD ENGG. CO. LTD.	3
EDITORIAL: FINANCE BILL, 2015 PASSED BY THE LOK SABHA : PROPOSED AMENDMENTS	4-5

DISCLOSURES UNDER INSIDER TRADING REGULATIONS, 2015²

SEBI vide its circular has prescribed format for disclosure of securities held by promoter, Key Managerial Personnel and directors as required under the SEBI (Prohibition of Insider trading) Regulations 2015 (“Regulations”). Regulation 8 and 9 of the Regulations prescribe the requirements of Code of Fair Disclosure and Code of Conduct, respectively, the Circular mandates that the companies shall ensure that:

(a) Code of Practices and procedures for fair disclosure of Unpublished Price Sensitive Information (UPSI) and Code of Conduct that are formulated and published (on its official website), are confirmed to the stock exchanges, immediately.

(b) The company deals with only such market intermediary/every other person, who are required to handle UPSI, and who have formulated a code of conduct as per the requirements of the Regulations.

The Circular also mandates the Stock Exchanges to Put in place the adequate systems and issue the necessary guidelines and to make necessary amendments to the relevant bye-laws, rules and regulations as applicable for the implementation of the aforesaid.

¹ Notification F. No. IRDA/REG/3/93/2015

² Circular No. ISD/01/2015 dated 11.05.2015

THE NEWSLETTER

COMPETITION COMMISSION REJECTS K SERA SERA'S COMPLAINT³

Competition Commission of India ("CCI") has rejected the complaint filed against US-based Digital Cinema Initiatives, The Walt Disney Company India, Fox Star Studios, NBC Universal Media Distribution Services, Sony Pictures, Warner Bros and Paramount Films India. The petitioner- K Sera Sera Digital Cinema had alleged that the Digital Cinema Initiatives (DCI), a joint venture among the respondents has been formed with an object to dominate and monopolize the market of digital cinema exhibition in India and elsewhere. With "Avengers: Age of Ultron" releasing only through the DCI-compliant theatres by Walt Disney on Friday, the petitioner alleged that "the cartel is forcing the Indian companies, engaged in the business of digital cinema technology, to adhere to their standards and conditions even if the Indian companies have better technology".



The respondents contended that the uniform specifications for digital cinema ensure that the product and services of all industry participants are compatible, secure and interoperable and protects intellectual property. Furthermore, each DCI member company may independently decide the extent to which it will adhere to these DCI specifications for a digital cinema system.

CCI agreeing with the contention advanced by respondents and finding no "prima-facie" evidence of competition norm violations, rejected K Sera Sera's complaint. Furthermore, CCI said that the petitioner was unable to prove that respondents were abusing the dominant position in the market.

COMPANIES (INCORPORATION) AMENDMENT RULE 2015⁴

Ministry of Corporate affairs vide notification dated 01.05.2015 has issued Companies (Incorporation) Amendment Rule 2015 to amend Companies (Incorporation) Amendment rule 2014.

Amendment has omitted Rule 5 and has replaced it by Rule 7A wherein the penalty on One Person Company or any of its officers regarding contravention of provision of these rules has been reduced to half. Furthermore, for the conversion into One Person Company, private company will have to satisfy conditions of both paid up capital and average turnover conditions. With the new amendment names of the company struck off in pursuance of action under Section 560 of the Companies Act, 1956 shall also not be allowed for use for 20 years from the publication in Official Gazette.

Amendment has done away the requirement of verification of signature and photograph of first director or promoter by banker under for INC Form 10 and now the self attestation shall suffice. For simplifying the filling of forms for incorporation of company, a new integrated incorporation process has been introduced through integrated form no. INC-29, w.e.f. 01.05.2015.

³ COMPETITION COMMISSION OF INDIA Case No. 30 of 2015, Date: 22.04.2015

⁴ F. No. 01/13/2013-CL-V (Part-1), Government of India, Ministry of Corporate Affairs, Dated 01.05.2015

FULL DEDUCTION UNDER INCOME TAX ACT FOR UPFRONT PAYMENT OF DEBENTURE INTEREST⁵

The Hon'ble Supreme Court, in the case of *Taparia Tools Ltd vs. JCIT* held that wherein the issue was whether an assessee can be permitted full deduction under the provisions of Income Tax Act, 1961 for upfront payment of debenture interest, though such payment has been amortized over the tenure of the debenture in the books of account. In this case, the Apex Court based on the facts, held that since the assessee had claimed the deduction for the full amount of upfront interest payment, the same should be allowed in the year of payment and should not be spread over the term of the debentures. In this case, Supreme Court reiterated that there is no concept of deferred revenue expenditure under the Income Tax Act. Further, the Supreme Court also ruled that merely because a different treatment is given in the books of account, it would not deprive the assessee from claiming the entire expenditure as deduction.

DEPRECIATION ON GAS CYLINDERS⁶

In the case of *K.M. Sugar Mills Limited vs. Commissioner of Income Tax*, the Hon'ble Supreme Court has, while dealing with the fact that the cylinders were purchased for use of assessee's own plant but they were temporarily let out, held that once it is proved that the assessee is the owner of the gas cylinders and the same are being used for business purpose, the assessee is entitled to depreciation under Section 32 of the Income Tax Act, 1961. It has been held that the income arising from letting out was business income; therefore, depreciation can be claimed on the cylinders.

MACEDON INDO AUSTRIAN VENTURE (P.) LTD. v. NEW STANDARD ENGG. CO. LTD.⁷

The Competition Appellate Tribunal ("Tribunal") disposed off the application filed by the respondent under Regulation 65 of the Monopolies and Restrictive Trade Practices Regulations, 1991, for dismissal of the compensation application preferred by the complainant-applicant as barred by limitation.

The complainant had contacted the respondent for supply of Pneumatic Forging Hammer for his industrial unit. As per the terms and conditions specified in the letter of quotation, the hammer was to be delivered by the respondent 24.11.1995. However, the order was dispatched by the respondent on 24-7-1996. The guarantee period for the said order extended till 14-1-1998. After the erection of the hammer, the complainant discovered some defects in it and hence requested the respondent for deputing an engineer to rectify the defect. The request was declined stating that engineer could be deputed only on payment basis. Aggrieved by the refusal of the respondent to rectify the defect and provide free commissioning, the complainant filed a petition alleging that the respondent was guilty of unfair trade practice/restrictive trade practice. The complainant also filed a separate application under section 12B for award of compensation.

The Tribunal held that as per the respondent's own admission guarantee period expired on 24-1-1998, therefore, the complainant could have filed a suit within 3 years of the expiry of guarantee period. This being the position the compensation application of the complainant cannot be dismissed because, the same was filed within 2 years of the accrual of cause of action. Hence, application of the respondent under Regulation 65 of the Regulations was dismissed.



⁵ [2015] 55 taxmann.com 361 (SC)

⁶ 2015 (4) TMI 20

⁷ CA 51/2000

Finance Bill, 2015 passed by the Lok Sabha : Proposed Amendments

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The Finance Bill 2015 has received the President's consent on 14th May 2015. The original Bill as presented in Lok Sabha on 28th February 2015 received the assent of the President with certain amendments. Few key amendments are summarized as follows:

- MAT exemption extended to foreign companies in respect of long-term capital gains and short-term capital gains (on which STT is paid) arising to it. In the Original Bill this benefit was extended only to Foreign Institutional Investors. As a result any capital gains from transfer of securities, interest, royalty and FTS accruing or arising to foreign company has been proposed to be excluded from chargeability of MAT if tax payable on such income is less than 18.5%. Further, expenditures, if any, debited to the profit loss account, corresponding to such income shall also be added back to the book profit for the purpose of computation of MAT.
- Place of effective management made condition precedent for determining Residential Status of a Company. The concept of Control or Management (wholly in India) was proposed to be replaced with Place of Effective Management (at any time in India) through Finance Bill 2015, however since a company might have place of effective management in more than one country *at any point of time* during the year, **the words 'at any time' in India have been omitted to the effect that a company shall be deemed to be resident in India if its place of effective management is in India.**
- Mandatory filing of return if assessee has foreign assets

Any individual, being a resident other than not ordinarily resident in India who is, otherwise not required to furnish an income tax return is now obliged to do so if any time during the previous year;

- He holds, as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India; or
- He is a beneficiary of any asset (including any financial interest in any entity) located outside India.

However, filing of return shall not be mandatory under this proviso for an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India, if income arising from such an asset is includible in the income of the person who is beneficial owner of such an asset.

The meaning of the 'beneficial owner' and 'beneficiary' has been proposed as under:

'Beneficial owner' in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person;

'Beneficiary' in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

- Subsidies are no longer capital receipts:

The definition of income under section 2(24) is proposed to be amended, to insert a new sub clause (xviii) to provide that, assistance in form of a subsidy or a grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or the State Government or

- Bad debts could be claimed without writing off debt in books of account

Bad-debts could be claimed without writing off in books of account if the amount of debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standard notified under section 145(2) without recording the same in the accounts.

- Interest on loan taken for acquisition of an asset could only be capitalized till the asset is first put to use.

Interest on borrowings used for acquisition of asset till the asset is put to use shall not be allowed as deduction in any case under section 36(1)(iii).

- Additional Depreciation and Investment Allowance to industries set-up in Bihar and West Bengal

The original Finance Bill, 2015 as presented on February 28, 2015 proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant acquired and installed by a manufacturing undertaking or enterprise set-up in the notified backward area of the State of Andhra Pradesh and the State of Telangana.

The Finance Bill, 2015 proposes to extend the benefit of additional depreciation and investment allowance to the manufacturing undertaking or enterprise set-up in the notified backward area of State of Bihar and State of West Bengal as well.

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