



INDIAN LEGAL AND BUSINESS UPDATE
JUNE 1-JUNE 30, 2010

1. Government issues Service Tax Notification in respect of New Services.

The Finance Minister in the Budget 2010-11 had proposed to bring a host of additional services into the service tax net. The said taxable services were to come into effect from a date to be notified after the enactment of the Finance Bill, 2010. The Government has confirmed the effective date for these additional services to be taxed as 1 July 2010.

Services taxable w.e.f. 1 July 2010 would now also include:

- sum paid by a prospective buyer to a builder/ promoter/ developer prior to receiving the completion certificate deemed to be a taxable service
- Specified services provided by a builder/promoter/ developer to a prospective buyer such as preferential location, external or internal development for extra charge, etc.
- travel by air in India
- promoting of a 'brand' of goods, services, events, business entity etc.
- health services undertaken by hospitals for employees of business entities
- permitting commercial use or exploitation of any event
- sponsorship services relating to sports events
- services provided by electricity exchanges

2. Service Tax on Renting of Commercial Property Stayed .

The Delhi High Court, on 18 April 2009, had struck down the levy of service tax on Renting of Immovable Property Services in the case of Home Solutions Retail Ltd. In the said judgment it was observed that the mere renting of immovable property does not entail any value addition and the same cannot be regarded as a service. However the High Court duly considered the fact that any services provided 'in relation to' the renting of immovable property (incidental utilities and amenities) were covered within the scope of the said services and service tax continued to be payable on the same.

In an attempt to reintroduce the levy, the Parliament amended the definition of renting of immovable property services to explicitly provide that the mere renting of immovable property would be considered as a taxable service and service tax would be payable on the same. The said amendment was made with retrospective effect from 1 June 2007.

The said amendment was once again challenged by Home Solutions Retail Ltd by way of a writ petition with the Delhi High Court. Pursuant to the petition, the Delhi High Court observed that the said amendment is quintessentially against the decision of the High Court which previously struck down the levy. Consequently, the Delhi High Court has granted stay to the petitioners, thereby forbidding the authorities to collect service tax on the renting of immovable property alone. The said order further upholds the view that any services provided in relation to (related utilities and amenities, such as, air conditioning, electricity, telephone services) renting of immovable property shall continue to be taxable.

3. Direct Tax Code: Revised Discussion Paper on the Direct Tax Code.

The Central Board of Direct Taxes (CBDT) has issued a Revised Discussion Paper on the draft Direct Taxes Code Bill after considering the views of business houses / forums and the general public.

Under the Revised Discussion Paper, the Government has rolled back certain controversial provisions such as levy of Minimum Alternate Tax (MAT) on gross assets basis, introduction of Exempt-Exempt-Tax (EET) regime in respect of taxation of savings, removal of the interest deduction up to Rs.150,000 for self-occupied properties, taxation of long term capital gains on sale of listed shares. It has also sought to assuage fears of loss of treaty benefits due to override under domestic law and has clarified that tax holiday of units located in Special Economic Zones will stay.

Significantly, the Government is seeking to align with global best practices with respect to residence based taxation with the proposed introduction of Controlled Foreign Corporation (CFC) provisions and incorporation of the concept of effective control and management in the domestic tax law. While the scope and applicability of the CFC provisions is yet unclear, they are likely to significantly affect the taxation of Indian companies with overseas investments.

4. Introduction of Company Law Settlement Scheme and Easy Exit Scheme.

The Ministry of Corporate Affairs has introduced the following two Schemes with effect from May 30, 2010:

- **“Company Law Settlement Scheme, 2010”** giving opportunity to the defaulting companies to make their default good with rebate of 75 percent on the additional fee.
- **“Easy Exit Scheme, 2010”** giving opportunity to the defunct companies to get their names struck off from the register.

The above two schemes shall be available for three months and have been launched for providing benefit to the companies from prosecution and other legal action.

5. Government issues 25 percent compulsory Public Float Rule

The government made it mandatory for all listed companies to have a minimum public float of 25 per cent. Those below this level will have to get there by an annual addition of at least 5 per cent to public holding.

The finance ministry has notified the Securities Contracts (Regulation) (Amendment) Rules, which describe requirements to be met by companies for getting their shares listed on stock exchanges. The minimum threshold level of public holding will be 25 per cent for all listed companies. According to the notification, 'public' will not include the promoter, promoter group, subsidiaries and associates of a company. 'Public shareholding' will mean equity shares of the company held by the public and not the shares held by the custodian against depository receipts issued overseas.

The rules till now had also set the minimum float at 25 per cent, but stock exchanges and the Securities and Exchange Board of India (SEBI) had the power to waive or relax this for public sector undertakings and companies in the information technology, media, entertainment and telecommunications sectors. This leeway has been ended.

For new listing, if the post issue capital of the company calculated at offer price is more than Rs. 4,000 crore (USD 900 million), it may be allowed to go public with 10 per cent public shareholding requirement by increasing the public float by 5 per cent annually.

6. Government to reduce backlog of cases involving Government Departments

India's minister of law and justice has unveiled a "national litigation policy" under which the government "must cease to be a compulsive litigant" by creating a new layer of supervisory bureaucracy, reducing appeals and reviewing all existing cases, while tightening legal panels and increasing fees of lawyers representing the government. The national litigation policy was drafted by attorney general G E Vahanvati and is the product of resolutions passed by the "national consultation for strengthening the judiciary toward reducing pendency and delays", which was held on 24 and 25 October 2009.

The Indian government, which is trying to reduce the time the average case spends in Indian courts from 15 years to three years, will focus on reducing its own role as litigant in 21 million out of more than 30 million pending cases currently delayed in the courts.

Under the proposal each government department or agency would appoint a "nodal officer" who would be responsible for pro-actively managing the department's litigation and monitoring compliance with the new national litigation policy. The nodal officers and heads of each department would report to five "empowered committees". At the national level one committee would be chaired by the attorney general of India, while each of the four regional committees would be chaired by additional solicitor generals. The attorney general and solicitor general's

offices would review all pending cases and filter "frivolous and vexatious matters from the meritorious ones", as well grouping and categorising cases according to subjects and statuses involved.

7. Tribunals for economic disputes, offences likely.

The government plans to set up special dispute resolutions panels and courts to resolve economic offences and disputes, as it looks to make a clear distinction between cases of general and specialized nature. The proposal will now be discussed and finalized by the law ministry. It may require changes in existing legal frame work "Legislations dealing with sectors such as pension funds insurance, banking company affairs and mining will include special provisions for setting up such special courts.

This initiative follows a suggestion made by the Prime Minister's Council on Trade and Industry, which called for a special dispute resolution mechanism to administer all existing and future economic legislations. The first meeting of the reconstituted council was held on May 26.

8. Government Issues Clarity on ULIPs

The government has settled the two months long tussle between two regulators - Insurance Regulatory and Development Authority (IRDA) and Securities and Exchange Board of India (SEBI), by ruling that unit linked insurance products (ULIPs) will be governed by the IRDA. ULIPs account for more than 50 per cent of the life insurance business in the country. The money collected is invested in equities.

The law ministry has issued an ordinance amending the RBI Act 1934, Insurance Act 1938, SEBI Act 1992 and Securities Contract Regulations Act 1956 clarifying that life insurance business will include any unit linked insurance policy of scripts of any such instruments. This has thus settled the issue of regulating ULIPs.

9. Tobacco to be within GST ambit, alcohol outside.

The Union finance ministry has agreed to demand of the States that tobacco be kept within the ambit of Goods and Services Tax (GST) and alcohol outside it. Besides GST, the Centre would levy an excise duty on tobacco. At present, states collect tax on alcohol, while the Centre levies duty on tobacco.

The empowered group of state finance ministers had proposed that tobacco be subjected to GST, but alcoholic beverages be kept out of it and sales tax or value-added tax should continue to be levied on it.

The government, however, had argued alcohol and tobacco were demerit goods that were considered harmful to health and, therefore, both should be kept under GST, with states getting the power to levy additional excise on alcohol and the Centre getting the same power for tobacco.

Now, it has been agreed that alcohol should be kept outside GST because it is also used in medicines.

10. Government Moots Retail Sector Watchdog.

The Centre is considering creation of an independent body to regulate the country's vast retail sector. The retail regulatory authority would ensure a level playing field for indigenous retail traders if the government opens the sector to more foreign participation. The Ministry of Consumer Affairs and Food has convened a meeting on July 8 in Delhi to discuss this and other proposals and chart a comprehensive plan for the sector, according to the agenda paper of the meeting. The move is being seen as a precursor to opening the retail sector.

The meeting is also likely to take up for discussion a proposal to enact a National Shopping Mall Regulation Act. The need for a model legislation has been felt to prevent large domestic retailers from displacing neighbourhood grocery stores, a sensitive issue in India, where the retail market has been dominated by unorganised retailers. It is proposed that environmental and urban laws be strictly enforced to limit multiplication of malls and corporate retailers in a particular area. It is also suggested that licences for opening shopping malls be linked to the density of population and the stage of existing competition in retail in the zone.
