

# POC CONNECT UPDATES AUGUST 2013



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## Telecom M&A rules unlikely to be relaxed

The Telecom Ministry has retained the condition for Telecom M&As, that if an operator buys another player in the same circle then the buyer will have to pay to the Government a sum equivalent to the auction determined price for the spectrum owned by the seller.



## Lok Sabha approves factoring bill to help MSME sector

Lok Sabha passed a bill to regulate the factoring business which helps the micro, small and medium enterprises in dealing with the liquidity problems.

## EPFO mulls claims settlement in 3 days.

Retirement fund body EPFO is planning to settle all claims like transfer and withdrawal of provident fund within 3 days, this move will give benefit over one crore claimants every year. The body is expecting 1.2 crore claims in the current fiscal and hopes that if around 70 per cent of those are settled in three days, then about 84 lakh claimants would be benefited.



## New online form to make PF transfer claims easier

The Labour and Employment Minister released a revised online form to make provident fund transfers easier. This form can be submitted online as well as in physical form.



## Manufacturing zones are exempted from capital gain taxes in DTC Bill

The Government had announced the National Manufacturing Policy to give a push to manufacturing by offering a host of sops, including capital gains exemption, to units in mega industrial zones called the NMIZs.



## Starting trouble for LLP business model

Income Tax Act was amended to exempt from capital gain taxes, the conversion of existing partnership firms, private companies or unlisted public companies into LLPs, subject to some conditions, i.e. exemption is restricted to entities whose sales, turnover or gross receipt from business does not exceed Rs 60 lakh in the preceding three financial years.



### **Heavy Industry Minister seeks higher duty on imported power equipment**

Heavy Industries Ministry has sought an additional levy of 5 per cent on imported power gear to protect the struggling domestic power equipment players.

### **Consumer durables likely to face higher import duty**

The finance ministry has compiled a list of non-essential goods which could be subjected to higher customs duty, to reduce the country's import bill and bring down the current account deficit. Higher import duty will be imposed on electronic goods and other consumer durables.



## **Deadline to file income-tax returns extended till 5 August,2013**

The government on Wednesday extended the last date for filing income-tax returns by five days to 5 August,2013 . The due date, which was on Wednesday, has been extended in wake of “unprecedented surge” in number of income-tax returns being



### **ST return not to be filed by service provider if no service tax is payable**

If no service is rendered by service provider, there is no requirement to file ST-3 Returns, as he is not liable to pay any service tax

## MINISTRY OF CORPORATE AFFAIRS



**Registration of Electoral Trusts as Companies under Section 25 of the Companies Act, 1956 :General Circular 12/2013, Dated 28.06.2013**

- Trust of political parties as approved by CBDT known as Electoral Trusts” are now being allowed for registration under Section 25 of the Companies Act, 1956 and shall also comply with section 293A of the Act.
- The name application should be accompanied with an affidavit to the effect that the name to be obtained shall only be for the purpose of registration of companies under Electoral Trusts Scheme, 2013 as notified by the CBDT.

## FEMA

**Foreign Investment in India - Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies [new Regulation 14]**

**A.P. (DIR Series) Circular No.01, July 04, 2013**

As per the Notification No. FEMA.278/2013-RB, dated 7th June, 2013 Issued for Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2013, After Regulation 13 of **Foreign Exchange Management (Transfer or issue of Security by a person Resident outside India) Regulations.2000** ,a new Regulation 14 in relation to calculation of Foreign Investment in Indian companies has been notified which defines direct & indirect Foreign Investment is inserted .The complete notification is available at <http://rbi.org.in/scripts/NotificationUser.aspx?Id=8209&Mode=0>. The directions in relation to the Guidelines under the new regulation 14 ,in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999)





## FEMA



**External Commercial Borrowings (ECB) Policy**  
**- Non-Banking Finance Company - Asset Finance Companies (NBFC - AFCs)**

**A.P. (DIR Series) Circular No. 6, July 8, 2013**

It has been decided to allow Asset Finance Companies (AFCs) , to avail of ECB subject to certain conditions i.e. AFCs are allowed to avail of ECB under automatic route with the minimum average maturity period of five years, ECB in the form of Foreign Currency Bonds from international capital markets, will be permitted to be raised only from those international capital markets that are prescribed by the host country regulator, ECBs (including outstanding ECBs) under the automatic route can be availed up to 75 per cent of owned funds, subject to a maximum of USD 200 million, ECBs by AFCs above 75 per cent of their owned funds will be considered under approval route, Currency risk of such ECBs is required to be hedged in full.

**LLOYD ELECTRIC & ENGINEERING LTD v. DARPEET RADATION [RAJ], S. B. Company Petition No.35/2012, Dated 31st May'2013,**

**Applicable Section** - Sections 391(2) & 394 of Companies Act, 1956.

**Whether the Regional Director can raise objection in the state where the Transferee Co. is situated ,when the Scheme of arrangement is approved by the Court in the state of the Transferor Co.?**

**Brief Facts:**

The aforementioned Company filed a petition under Sections 391(2) and 394 of the Companies Act, 1956 for sanctioning the Scheme of Arrangement.

The Regional Director raised various objections in the form of the notices with regards to petition filed by the Transferee Co. which are as under:

- That as the company has filed its Balance Sheet as at 31.03.2012, no useful purpose would be served to keep the appointed date & filing of annual accounts after the appointed date as at i.e 1.04.2011,
- That One of the Business activity not provided in the object clause in the memorandum of association of the transferee company,
- Further objection raised on increase in the holding of promoters after the implementation of the said Scheme,
- Regional Director has further pointed out that the transferee company is listed company at BSE and NSE and nothing has been placed on record.

**Held:**

The Company Petition was allowed and the scheme was sanctioned.

**Conclusion:**

- Once the Scheme is approved by the Court of the state of the petitioner company the Regional Director cannot raise any objection for the same in the state of the Transferee Company,
- Once the appointed date is decided by the Court then there appears no justification on the appointed date

For other objection since the undertaking has been provided by the transferee Co. there appears to be no. reason for disallowing the merger.



**CIT vs. Vector Shipping Services (P) Ltd (Allahabad High Court) (ITA no 122 of 2013)**

**Sec 40(a) (ia) disallowance applies only to amounts “payable” as of 31st March and not to amounts already “paid” during the year.**

**Brief Fact:**

M/S Vector Shipping Services (P) Ltd (Assessee) engaged Mercator Lines Limited ('Mercator') to perform ship management work on its behalf for which it paid an amount of Rs. 1.17 crore. The Assessee claimed that the amount paid by it to Mercator was a '*reimbursement of salaries*' and that the assessee was not required to deduct TDS as Mercator had deducted TDS on the payments made by it to the employees. The AO disagreed and disallowed the entire payment on the ground that under Section 40 (a) (ia) expenses could not be allowed as no tax was deducted at source under Chapter XVII (B) by the Assessee.

On appeal being filed by assessee before the CIT (A), CIT (A) reversed the findings & held that The provisions of section 194C read with sec 40 (a) (ia) of the Act are not applicable to the case of the appellant. Further, the LD. CIT(A) held that when such type of expenses incurred by the appellant were totally paid and not remained payable as at the end of the relevant accounting period, provisions of section 40a (ia) of the Act are not applicable. The Revenue preferred an appeal before the ITAT.

**Held:**

The Hon'ble ITAT concurred with the decision of CIT (A) and held that no TDS was required to be deducted on reimbursement. Further, the Tribunal also relied on Merilyn Shipping and Transport Ltd [136 ITD 23 (SB)] where it was held that sec 40(a) (ia) applied only to amounts that were “payable” as at the end of the year and not to amounts that had already been “paid” during the year.

**CIT vs. Nalin P. Shah (HUF) (Bombay High Court) (ITA (LOD) no.49 of 2013)**

**No penalty Section 271(1) (c) even for unsustainable/ non-debatable claims if there is proper disclosure in the return of income**

**Brief Fact:**

Nalin P. Shah (HUF) ('Assessee'), claimed a deduction for the loss of Rs. 3.08 crores suffered by him on transfer of US 64 units. The long term capital loss was on account of sale of mutual funds exempt under section 10(33) of the Act. The Ld. Assessing Officer ('AO') disallowed the capital loss on the ground that the exemption in section 10(33) of the Act applies to a loss as well and accordingly imposed penalty u/s 271(1) (c) of the Act. In appeal, CIT (A) upheld the order of AO on the same grounds. On further appeal by the assessee, the Tribunal held that as the Assessee had disclosed all the details with the return and not filed inaccurate particulars of his income. Thus, the making of a wrong claim / incorrect claim did not attract penalty u/s 271(1) (c) of the Act. The Revenue appealed before the High Court.

**Held:**

The Hon'ble High Court affirming the views of Tribunal dismissed the appeal of the Revenue and said that the same was squarely covered by Reliance Petroproducts 322 ITR 158 (SC)



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