

# POC Connect

OCTOBER ,2013 EDITION



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## **Attestation of Financial statements mandatory by CFO's**

Chief Financial Officers will henceforth have to attest the financial statements of companies as specified in the new company law, which also gives statutory recognition to the post of CFO as a key managerial person.

## **Benefit of OPC- Only by Indian Resident**

Only natural-born citizens of India, including small businessmen, entrepreneurs, artisans, weavers or traders among others can take advantage of the 'One Person Company' (OPC) concept outlined in the new Companies Act. Non-resident Indians or individuals who do not reside in India for over 182 days cannot incorporate a OPC.

## **Condition free foreign listing of unlisted Indian Companies**

The government has allowed unlisted companies to list on overseas stock exchanges without any conditions. Listing has been allowed only on exchanges in IOSCO, Financial Action Task Force compliant jurisdictions or those jurisdictions with which market regulator SEBI has signed bilateral agreements. ► **POC Connect**, October, 2013 Edition

## **SEBI wants stock exchanges to rein in non-compliant companies**

The Securities and Exchange Board of India (Sebi) has asked stock exchanges to act against companies that don't comply with listing norms and wants exchanges to impose fines, freeze the shares of promoter and promoter group companies or transfer trading in the stock of such companies to a separate category.

## **Investors may get exit option if promoters misuse issue proceeds**

Investors may have the option of exiting a company if its promoters use the public issue money other than the stated objective in the prospectus. SEBI shall mandate promoters to give an exit offer to those shareholders who don't agree to a change in the objects of the prospectus at a later stage which will plug such loopholes. SEBI will decide the exit price of such offers.



## **NASSCOM, SIDBI ink partnership for MSME development**

The National Association of Software and Services Companies have entered into a Memorandum of Understanding with Small Industries Development Bank of India to work together for entrepreneurship growth and development of MSME in the Information and Communication Technology (ICT) sector in the country.

### **RBI Blocks “Interest Free” Plans**

Credit card issuers have been working with retailers to offer special no interest offers for years, but the Reserve Bank of India said the plans were misleading as they often have hidden costs. The RBI felt that the plans were just camouflaging the interest and passing it on to consumers as a fee or higher price.

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## **Finance Ministry sends letters to indirect tax defaulters**

The Finance Ministry sent letters to service tax, customs and excise duty defaulters asking them to come clean on certain dubious transactions carried out by them. The letters are being issued by two lead intelligence agencies under the Finance Ministry-- Directorate General of Central Excise Intelligence (DGCEI) and Directorate General of Revenue Intelligence (DGRI)

## **DIPP writes to Finance Ministry for NIMZ capital gains relief**

The department of industrial policy and promotion (DIPP) has asked the finance ministry to give a relief to the national investment and manufacturing zones (NIMZs) from capital gains tax and to ensure manufacturing zones enjoy tax benefits in the Direct Tax Code (DTC) Bill.

## **Govt extends audit report uploading deadline to October 31**

The government extended the last date for uploading audit reports of income tax returns by a month to October 31. The due date, which was earlier September 30, has been extended in the wake of difficulty in uploading the report of audit electronically as prescribed under the sub-rule (2) of Rule 12 of the I-T rules for the assessment year 2013-14.

## **CBDT notifies GAAR, makes scheme more investor friendly**

The Central Board of Direct Taxes (CBDT) notified the General Anti-Avoidance Rules (GAAR), making the scheme more investor friendly. The Income-tax (17th Amendment) Rules, 2013, issued by the Board introduces a threshold of Rs 3 crore for invoking GAAR.



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## RESERVE BANK OF INDIA

RBI/2013-14/233, A.P. (DIR Series) Circular No. 39 dated 6th September, 2013

### Export and import of currency

Reserve Bank of India enhanced the existing limit of Rs. 7,500 per person to Rs. 10, 000 per person and providing greater flexibility to the resident individuals travelling abroad.

Accordingly, any person resident in India:

- May take outside India (other than to Nepal and Bhutan) Indian currency notes up to an amount not exceeding Rs.10, 000 per person; and
- Person on a temporary visit, may bring into India at the time of his return (other than from Nepal and Bhutan), Indian currency notes up to Rs.10, 000 per person.

## MINISTRY OF CORPORATE AFFAIRS

### Circular No. 16 /2013 dated 18th September, 2013

Ministry of Corporate Affairs issued a circular whereby they clarified the notification issued on 12th September, 2013, as per the notification 98 sections of the companies Act, 2013 will come into effect from 12.09.2013.

[http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_16\\_2013.pdf.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_16_2013.pdf.pdf)



## MINISTRY OF CORPORATE AFFAIRS

### Companies (Removal of Difficulties) Order, 2013 dated 20.09.2013

Clarification issued with respect to exercise of powers of Board of Company Law Administration under sections 24, 58 and section 59 in pursuance of the second proviso to sub-section (1) of section 465 of Companies Act, 2013 until a date is notified by the Central Government for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter XXVII of the Companies Act '2013.

## MINISTRY OF CORPORATE AFFAIRS

### General Circular No. 13/2013 on 29/07/2013

#### Whether Hindu Undivided Family (HUF) / its Karta can become partner a designated Partner (DP in Limited Liability Partnership (LLP)).

It has come to the notice of the MCA that some Hindu Undivided Families (HUFs)/ Karta of such families are applying to become partner / Designated partner (DP) in LLPs and a question has arisen whether an HUF or Karta can be allowed to do so. After examining the matter, it is now clarified that in terms of sec 5 of the LLP Act, 2008, only an individual or body corporate may be a partner in an LLP. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008 and hence a HUF or its karta cannot become a partner/ designated partner in LLP.

## CENTRAL BOARD OF EXCISE AND CUSTOMS

Circular No.172/7/2013, dated 19.09.2013

Section 66D (I) of the Finance Act, 1994 Negative List of Services, In view of section 66D (I) and entry 9 of Notification No. 25/2012-ST, All services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as “auxiliary educational services” and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification. In addition to the services mentioned in the definition of “auxiliary educational services”, other examples would be hostels, housekeeping, security services, canteen, etc.

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**COMMISSIONER OF SERVICE TAX V. LINCOLN HELIOS (INDIA) LTD. 2011 (23)  
S.T.R. 112 (KAR.)**

*Is the service tax and excise liability mutually exclusive?*

**BRIEF FACTS:**

The assessee undertook not only manufacture and sale of its products, but also erection and commissioning of the finished products. The customer was charged for the services rendered as well as the value of the manufactured products. The assessee paid the excise duty on whole value including that for services, but did not pay the service tax on the value of services on the ground that there could not be levy of tax under two parliamentary legislations on the same transaction.

**HELD:**

The High Court held that the excise duty is levied on the aspect of manufacture and service tax is levied on the aspect of services rendered. Hence, it would not amount to payment of tax twice and the assessee is liable to pay service tax on the value of services.



**CCE & ST V. ADECCO FLEXIONE WORKFORCE SOLUTIONS LTD. 2012 (26) S.T.R  
3 (KAR)**

***Whether penalty is payable even if service tax and interest has been paid before issue of the show cause notice?***

**BRIEF FACTS:**

The assessee had paid both the service tax and interest for delayed payment before issue of show cause notice under the Act. Section 73(3) of the Finance Act, 1994 categorically stated that if the payment of service tax and interest has been intimated to the authorities in writing, the authorities should not serve any notice for the amount so paid. But to the above, the authorities initiated the proceedings against the assessee for recovery of penalty under section 76.

**POINT OF DISPUTE:**

Assessee contested the issue of SCN as they had already paid the service tax along with interest for delayed payment of service tax.



## DECISION OF THE CASE:

The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.

## KODAK INDIA VS. ADDL.CIT (2013)37-233(MUMBAI – TRIB.) 1<sup>ST</sup> OCT,2013

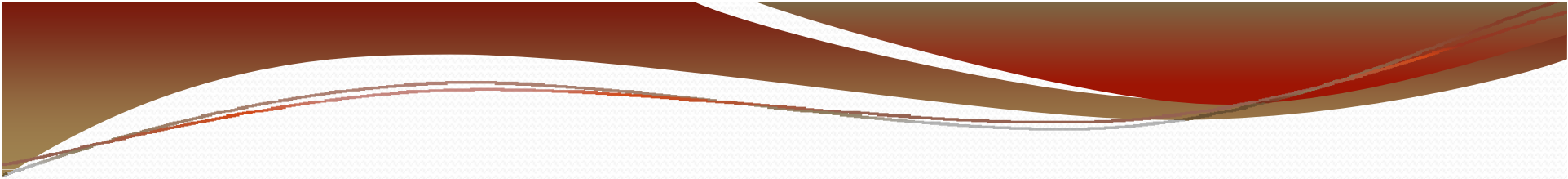
*Transactions among Indian Subsidiaries pursuant to contract with their parent co's out of purview of TP.*

### BRIEF FACTS:

In the instant case, Assessee, an Indian company sold its medical imaging business to 'C', Indian company disclosing sale transaction as normal domestic transaction. On perusal of documents, AO concluded that such transaction was on global basis, wherein holding company of assessee sold its imaging business to C Inc. TPO proceeded to determine ALP based on worldwide revenue break up amongst countries submitted by assessee.

### TRIBUNAL HELD:

- a) It was undisputed that the transaction involved were two domestic companies who are individual and independent subsidiaries of their own and independent holding companies.

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- b) Transaction could only become international transaction, if either both of the Associated Enterprises ('AE') or one of the AEs was Non-Resident.
  - c) As per the wordings of section 92B, there had to be an AE, with whom there existed international transaction, only then it could be examined as to whether international transaction with 'such other person' existed or not.
  - d) Transactions entered into by holding foreign companies and subsidiary Indian companies were independent of each other. Though the instant transaction was as a consequence of the global agreement entered into by the holding companies, yet the entire exercise of transfer of imaging segment was independently done on its own terms by the assessee and the other party, i.e, 'C' India.
  - e) No element of international transaction was involved in sale of imaging segment by assessee of its business to C and it was purely a domestic transaction.

**A.A.R. NOS. 1037 OF 2011, BEFORE THE AUTHORITY FOR ADVANCE RULINGS, 20/09/2013**

[\[http://aarrulings.in/it-rulings/uploads/pdf/1380196264\\_aar-1037-ruling-eruditus-education-private-limited-chennai.pdf\]](http://aarrulings.in/it-rulings/uploads/pdf/1380196264_aar-1037-ruling-eruditus-education-private-limited-chennai.pdf)

***Payments to Foreign University for teaching services not taxable as FTS in view of the exclusion clause under India-Singapore tax treaty. Further, the foreign university does not have PE in India.***

**BRIEF FACTS:**

The applicant M/s Eruditus Education Private Limited was providing high quality executive education programme entered into a programme partnership agreement with Ms. INSEAD, a tax resident company at Singapore which is in the business of providing various management education programmes globally. As per the Programme Partnership Agreement INSEAD is obliged to conduct teaching intervention as per the agreed terms while Eruditus.

The programme of 30 Days was spread over 11 Month wherein teaching is conducted for total 16 Days in Foreign campuses, 6 Days in India and Balance 8 Days through tele-presence.

### **ISSUE BEFORE AUTHORITY FOR ADVANCE RULING:**

- Whether the payment made by applicant to foreign university for the services under the agreement is in nature of FTS as per Article 12 of the Convention between India and Singapore for the Avoidance of Double Taxation and the Convention of fiscal evasion with respect to taxes on income' ("the India-Singapore Tax Treaty") and / or under the provisions of Section 9(1) (vii) of the Income tax Act, 1961?
- Whether the foreign university would have PE in India under Article 5(1) or 5(8) of the tax treaty in relation to activity of conducting in-class teachings or through tele-presence in India?
- Based on the above whether payment received by INSEAD are chargeable to tax in India?

### HELD :-

- Since the Article 12.5(C) of DTAA between India & Singapore under para 4 specifically excludes payment for teaching in or by educational institutions out of the ambit of fee for technical services. Therefore, the same will not be taxable under FTS & as there is no dispute that the foreign university is an educational institution and services rendered are in the nature of “teaching”. AAR also held that the foreign university does not have PE in India under Article 5(1) or 5(8) of the tax treaty in relation to activity of conducting in-class teachings or through tele-presence in India. Thus the payments were not chargeable to tax in India and there will not be any withholding applications.



Thank You!

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