

CORPORATE UPDATE

**FOR CLIENT CIRCULATION
ONLY**

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21st November, 2005

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INCOME TAX

I. Extension of stay on assessment and recovery proceedings u/s 80HHC

The Central Board of Direct taxes (CBDT) has vide their instruction dated 31st October 2005, directed all assessing officers to keep in abeyance dated 31st October, 2005 to till 30th November, 2005 all assessment and recovery proceedings relating to assessments reopened specifically to reassess the claims for deduction u/s 80HHC of the Income Tax Act in respect of profits from sale of DEPB Scrips.

II. Revision of Monetary limits for filing appeals

CBDT has on 24.10.2005 issued instruction no. 2/2005 raising the monetary

limits for filing appeals/references before various appellate authorities in a move to reduce the number of litigation for recovery of tax arrears. Now the appeal by the tax department could be filed only if it exceeds the monitory limit of tax effect as follows:

S.No.	Income tax authority	Tax effect
1.	Appeal before Income Tax Tribunal	Exceeds Rs. 200,000/-
2.	Appeal before High Court	Exceeds Rs. 400,000/-
3.	Appeal before the Supreme Court	Exceeds Rs. 10,00,000/-

However, where substantial question of law of importance is involved or cases where the same questions of law will repeatedly arise, will be separately considered on merit without being hindered by the monetary limits.

III. Non levy of penalty on delay in furnishing AIR

In exercise of the powers conferred by section 119 of the Income Tax Act, the Central Board of Direct Taxes has directed vide order dated 30.09.2005 that no penalty shall be levied under section 271FA of Income Tax Act in cases where Annual Information Return under section 285BA of the Income Tax Act in respect of specified financial transactions registered or recorded during the financial year 2004-05 is furnished on or before 30th November, 2005.

SERVICE TAX

Service Tax on maintenance or repair of software

The Department of Revenue, Ministry of Finance has issued Circular No. 812/2005-ST dated 7.10.2005 on the leviability of service tax on maintenance or repair of software.

Following the principles laid down by the Supreme Court in the case of Tata Consultancy Services Vs. State of Andhra Pradesh

(Civil appeal no. 2582 of 1998), the Circular has clarified that sale of computer software whether branded or unbranded, falls within the scope of sale of goods. Thus maintenance or repair or servicing of software is leviable to service tax under section 65(105)(zzg) read with section 65(64) of the Finance Act, 1994. Copy of the relevant circular is reproduced below for information:

Circular No. 81/2/2005-ST

7 th October 2005

F.NO.354/132/2005-TRU

Government of India

Ministry of Finance

Department of Revenue

Tax Research Unit

Sub: Leviability of service tax on maintenance or repair of software.

1. Board has examined the leviability of service tax on maintenance or repair or servicing of software under section 65(105)(zzg) read with section 65 (64) of the Finance Act , 1994.

2. Supreme Court in the case of Tata Consultancy Services vs State of Andhra Pradesh (Civil Appeal no 2582 Of 1998) has observed that all the tests required to satisfy the definition of goods are possible in the case of software and in computer software the intellectual property has been incorporated on media for the purpose of transfer and software and media cannot be split up. Therefore, sale of computer software falls within the scope of sale of goods. Supreme Court has also observed that they are in agreement with the view that there is no distinction between branded and unbranded software.

3. Branded software, also known as canned software, sold off the shelf, is transferred in a media and is sold as such and the Supreme Court has decided that such branded software falls within the definition of goods. In the case of unbranded / customized software, the supplier develops the software and thereafter transfers the software so developed in a media and it is taken to the customer's premises for loading in their system. Thus, in the case of unbranded / customized software also, the intellectual property namely software is incorporated in a media for use. Supreme Court has held that software in a media is goods.

4. Any service provided to a customer by any person in relation to maintenance or repair is leviable to service tax under section 65(105)

(zzg) of the Finance act , 1994. "Maintenance or repair" is defined under section 65(64) of the said Act. Accordingly, "maintenance or repair" means any service provided in relation to maintenance or repair or servicing of any goods or equipment.

5 Software, being goods, any service in relation to maintenance or repair or servicing of software is leviable to service tax under section 65(105)(zzg) read with section 65 (64) of the Finance Act, 1994.

6 These instructions are issued taking into account the said decision of the Supreme Court , and in supersession of all earlier clarifications / circulars issued on the above subject.

7. Field formations may be suitably informed.

8. Trade notice may be issued for information of the trade.

9. The receipt of this circular may kindly be acknowledged.

10. Hindi version will follow.

F.NO.354/132/2005-TRU

**R.Sriram
Deputy Secretary to the Govt of India**

FOREIGN DIRECT INVESTMENT

Enhancement of FDI ceiling in Telecom Sector

The existing ceiling of 49% in Telecom Sector has been enhanced to 74%, subject to the conditions as laid down in Press Note No. 5 (2005 series) issued by the Govt. of India, Secretariat for Industrial Assistance.

AUDITING

I. Applicability of Accounting Standard (AS) 28, Impairment of Assets to Small and Medium sized enterprises (SME's)

ICAI has made an announcement on 19th October, 2005 regarding applicability of AS-28, Impairment of Assets, to small and medium sized enterprises (SME's). Considering the fact that detailed cash flow projection are often not readily available, SME's have been given an option to measure the value in use on the basis of reasonable estimate of the value of using the asset over its useful life instead of computing the value in use by the present value technique.

As per the announcement, these rectifications would come into effect from the same dates on which AS-28 comes into effect for respective SME's i.e. from 01.04.2006 for Level II enterprises and 01.04.2008 for Level III enterprises.

II. Revised Tax Audit Guidance Note

ICAI has issued 5th revised Guidance note on tax audit u/s 44AB of the Income Tax Act. The revised edition is a comprehensive publication taking into account all the statutory amendments made and judicial decisions rendered since 1999. It includes providing guidelines to tax auditors to discharge responsibility of furnishing the details required in Form 3CD on introduction of Sec 40(ia).

It also gives a detailed guidance regarding the particulars to be furnished in respect of parameters included in new annexure added to Form 3CD.

Further it takes into account the Accounting Standards Auditing and Assurance Standards introduced in recent past and relaxations therein.

DATES TO REMEMBER

1. The due date for filing TDS & TCS Statements (whether in computer media or in paper format) for the quarter ending 31.12.2005 is 15th January, 2006.
2. The due date for deposit of the third installment of advance fringe benefit tax for the quarter ending 31.12.2005 is 15th January, 2006.
3. The next date for deposit of advance tax for the financial year 2005-06 (third installment for corporate assesseees and second installment for non corporate assesseees) is 15th December, 2005.