

CORPORATE UPDATE

For Client Circulation Only

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LEGAL

COMPANY LAW

Restriction of time period on the availability of name

With effect from 19th November, 2007, where the Registrar of Companies informs the promoters of a new company or an existing company about the availability of the proposed name with which the proposed company is to be registered or the name of an existing company is to be changed, as the case may be, such name shall be available for adoption by the said promoters or by the said company for a period of 60 days from the date the name is allowed.

However, the applicant may apply for extension for retention of such name for a further period of 30 days on payment of additional fees as prescribed. But no further extension will be granted after expiry of 90 days from the date the name is allowed in the first instance. The name allowed shall lapse after expiry of 60 or 90 days, as the case may be, from the date it is first allowed.

The abovesaid amendment came into effect vide Notification No.G.S.R. 720(E) dated 16.11.2007.

Before the above mentioned notification, the name allowed by the Registrar, if not adopted, shall lapse after the expiry of a period of 6 months from the date on which the name was initially allowed or renewed.

TAX

INCOME TAX

New treaty signed between India and State of Kuwait

The Agreement for the Avoidance of Double Taxation signed between India and State of Kuwait on 15th June 2006 has been notified vide notification No. 277 dated 27th November 2007, and has come into force w.e.f. 17th October 2007.

Advance Ruling Authority holds long term Capital Gains arising to a Non Resident taxable @ 10%

Authority for Advance Ruling (AAR) has recently held in the case of Timken France SAS that long term capital gain (gain on shares held for more than 12 months), arising to a Non-Resident, on sale of shares listed on a stock exchange are liable to tax, in terms of provisions of Section 112(1) of Income Tax Act, 1961, at the lower rate of 10% and not 20%. It was held that this position is applicable even when in computation of long term capital gain, arising to a Non-Resident, benefit of computation of gain, in the foreign currency, in which shares were acquired, is available in terms of provisions of Section 48 of the Income Tax Act.

The AAR disagreed with the reasoning given by the Income Tax Appellate Tribunal in the case of BASF AG Vs. Deputy CIT, 293 ITR (AT) 1, which held that benefit of lower rate of 10% was not available in the case of a Non-resident..

[Ref. (2007) 294 ITR 513 (AAR)]

TAX

FRINGE BENEFIT TAX

Circular No. 9/2007 - Explanatory circular on Fringe Benefit Tax arising on allotment or transfer of specified securities or sweat equity shares:

With a view to bring grant of stock options by employers to employees within the purview of FBT, Finance Act, 2007 had inserted a new clause and the salient features of this provision are given in the circular, F. No. 142/25/2007-TPL, issued by Central Board of Direct Taxes, dated 20th December 2007. ([See attachment](#)).

VAT

VAT introduced in State of Uttar Pradesh

Uttar Pradesh, one of the biggest States in India, has introduced Value added tax (VAT), with effect from January 1, 2008. All other states in India have already introduced VAT.

SERVICE TAX

The Central Board of Excise & Customs, in association of with the Directorate General of Service Tax, has published a booklet on Frequently asked Questions on Service Tax, as enclosed. ([see attachment](#))

Important Notification on Service Tax

List of records maintained to be submitted to service tax authorities by 31st January, 2008

1. According to Rule 5(1) of the Service Tax Rules 1994, "the records including computerized data as maintained by an assessee in accordance with various laws in force from time to time shall be acceptable".
2. Rule 5(2) of the said Rules provided that at the time of filing the return for the first time, the assessee was required to furnish to the Superintendent of Central Excise a list of all accounts maintained by the assessee in relation to service tax.
3. Recent Notification No. 45/2007 - Service Tax dated 28th December 2007 as issued by the Ministry of Finance, Government of India, has substituted a new Rule 5(2) in the place of the existing Rule 5(2).
4. This new Rule 5(2) has come into force with effect from 28th December 2007.
5. According to this new Rule, every assessee is required to furnish to the concerned Superintendent of Central Excise by 31st January 2008 or along with the first return whichever is later, a list, in duplicate, of:-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to-
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any

- (ii) all other financial records maintained by him in the normal course of business

In terms of the above requirement, every service tax assessee should submit the list of relevant records in duplicate, latest by 31st January 2008. New assesseees shall submit the records along with the first return.

The relevant records shall pertain to the functions mentioned in para 5(i)(a), (b), (c) and (d) above and also specified in para 5(ii) above.

An illustrative list of records for the purpose is given below:

Records pertaining to:-

- Income from registered services including invoices raised, service tax payable/paid account.
- Service tax receivable/received account, wherever applicable and supplier invoices in cases where service tax credit is availed.
- Details of Cenvat/service tax credit availed and utilized every month/quarter as the case may be including the opening and closing balances in respect of both input services/Capital goods, wherever applicable.
- Other records like Sales Book, purchase book, Excise Registers, Stock registers etc.
- Other financial records such as Cash Book, Bank book, General Ledger, Journal, Debtors/Creditors Ledger.