



**LALIT BAJAJ &  
ASSOCIATES**

# CONNECTION

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## DATES TO REMEMBER

- **05.02.2012**  
Payment of Service Tax and Excise for the month of January 2012
- **07.02.2012**  
Payment of TDS for the month of January 2012
- **15.02.2012**  
Excise Return for the month of January 2012
- **21.02.2012**  
VAT payment for the month of January 2012

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## Tax Implication of Purchasing a Property Abroad

With liberalisation of overseas investment norms, securing an overseas property has become popular. Among other aspects, income tax and foreign exchange regulations in both countries, and factors, such as stamp duty, inheritance tax and estate tax, needs to be considered.

A person resident in India (PRII), as per Indian Foreign Exchange Management Act, 1999 (Fema), can purchase overseas property only under prescribed circumstances, without RBI approval. The property may either be purchased out of foreign currency acquired or held by him outside India, or out of foreign exchange held in his Resident Foreign Currency Account.

Property may also be purchased by PRII under the Liberalized Remittance Scheme (LRS), within the overall limit of \$200,000 per FY per individual. Accordingly, a family of four should be eligible to remit up to \$800,000 for such a transaction. Also, investor can retain/invest income from such property overseas. Income relating to an overseas property would be taxed in the hands of an individual only if he qualifies as a resident and ordinarily resident (ROR) in India in a given FY, or if

any related income is received directly in India by the individual. If the individual qualifies as a non-resident or not ordinary resident, there would be no Indian tax implications, if income is received outside India.



No distinction in respect of tax implications is made based on whether the property is situated in India or overseas. The annual value of any one self-occupied property is considered as Nil.

The other properties are taxed as let-out (where actually let-out) or deemed to be let-out, as the case may be. The rental income is subject to tax at normal rates after allowing deductions towards municipal taxes, standard deduction of 30% and interest payable on housing loan (for self-occupied property, deduction is restricted to \$150,000 per FY). Also, any loss from the property for a particular FY can be set-off

against other income of that FY. Any unadjusted loss can be carried forward for adjustment against house property income for eight subsequent years.

As in the case of domestic properties, gain/loss on sale of overseas property is also treated as capital gain/loss and is subject to the same tax regime. If the property is held for more than 36 months, the income is classified as a long-term capital gain (LTCG) and subject to 20.6% tax (with indexation benefit). If the holding period is shorter, the gains are treated as short term capital gain (STCG) and taxed at normal rates.

In case of LTCG on sale of residential property, if the investment is made either in another residential house or specified bonds, exemption may be availed, subject to conditions. In case of LTCG on sale of other asset, if the investment is made in a new residential house, exemption may be availed subject to the given conditions. To claim this exemption, you should not own more than one house (other than the new house), on the date of sale.

## Refund of Statutory Fees paid for certain services



The Ministry of Corporate Affairs has decided to refund the statutory fees paid for certain services. Earlier there was no process in MCA21 for refund of fees wrongly paid by the stakeholder while availing various services at MCA 21. New refund e-Form needs to be filed by the stakeholder applying for refund and upon processing of the same the refund request shall be approved or rejected.

The refund of MCA21 fees is available in the following cases:

- (a) Multiple Payments of Form I Form 5;
- (b) Incorrect Payments; and
- (c) Excess Payment.

fied Copies, Payment for transfer deeds, Stamp duty fee (D series SRN), IEPF Payment, STP Forms, DIN e-Form, etc.

Refund process is not applicable for certain services/e-Forms like Public Inspection of documents, Request for Certi-

“ Amendment in Regulation 30 ”

## Company Law Board (Amendment) Regulations, 2012

In exercise of the powers conferred by sub-section (5) and sub-section (6) of section 10E of the Companies Act, 1956 (1 of 1956), the Company Law Board hereby makes the following regulations further to amend the Company Law Board Regulations, 1991, namely:-

1. (1) These regulations may be called the Company Law Board (Amendment) Regulations, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the [Company Law Board Regulations, 1991](#), for regulation 30, the following shall be substituted, namely:

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"30 Inspection of record and supply of certified copies - (1)

The record of a pending case shall be open, as of right, to the inspection and supply of the certified copies thereof to the parties or their authorised representatives, on making an application in writing and on payment of a fee of fifty rupees per day for inspection of documents of a case and ten rupees per page for supply of certified copies of order or any other document respectively and the inspection of record shall be pre-requirement for supply of certified copy of a case.

(2) The applicant shall distinctly specify in the application, the record of a case for which inspection or certified copies are desired and the application may either be presented at the filing counter or may be sent by post at the address of the concerned Company Law Board Bench along with the requisite fees.

(3) A person, who is not a

party to the proceedings, has, however, no right to inspect or to obtain certified copies of the records of a pending case except with the consent of the party who has filed the case or under the orders of the Bench.

(4) The inspection of record shall not be permitted on the date fixed for its hearing without the order of the Bench.

(5) After receipt of an application, the inspection shall be allowed within a period of two working days and certified copies shall be supplied within a period of three working days respectively.



# Qualified Foreign Investors (QFIs)



In a major policy decision, the Central Government has decided to allow Qualified Foreign Investors (QFIs) to directly invest in Indian equity market in order to widen

**QFIs allowed to directly invest in Indian Equity Market**

the class of investors, attract more foreign funds, and reduce market volatility and to deepen the Indian capital market. QFIs have been already permitted to have direct access to Indian Mutual Funds schemes pursuant to the Budget announcement 2011-12. As a next logical step, it has now been decided to allow QFIs to directly invest in Indian equity market in

order to widen the class of investors, attract more foreign funds, and reduce market volatility and to deepen the Indian capital market. Foreign Capital inflows to India have significantly grown in importance over the years. The QFIs shall include individuals, groups or associations, resident in a foreign country which is compliant with FATF and that is a signatory to IOSCO's multilateral MoU. QFIs do not include FII/sub-accounts.

**PAN details to be furnished in DIN (MCA) database latest by 29 Feb 2012**

## Updating of Income Tax PAN details in MCA21 DIN Data

Ministry of Corporate Affairs has mandated providing Income Tax PAN for obtaining DIN in case of Indian nationals. All existing DIN holders who have not furnished their PAN earlier at time of obtaining DIN are also required to furnish PAN details by filing DIN-4 form on MCA21 by 29 February 2012.

In addition, in case of those DIN who have furnished their PAN

earlier, there may be mismatch between particulars provided in their DIN application with Income Tax PAN details. Such DIN holders are also required to correct their particulars in DIN database by filing Form DIN-4; In case of correction needed in PAN database, they need to apply to Income Tax authorities and then file correct information with MCA21 using DIN-4 form.

This activity is also to be completed by 29 February 2012.

Non-provision of PAN details or any mismatch in DIN and PAN information will be treated as default and such DINs may be disabled for access of MCA21 system after 29 February 2012.

## Recent Judgments

Provisions of sec 80 and sec 139(3) apply to business losses and not to unabsorbed depreciation which is exclusively governed by the provisions of sec 32(2) hence, the tribunal was justified in allowing the carry forward of unabsorbed depreciation though the return of loss was not filed within the time provided in sec 139(1). Commissioner of Income Tax vs. Govind Nagar Sugar Ltd. (2011) 244 CTR (Del) 266.

**“Belated Return & carry forward of Depreciation”**



# First Impression with IFRS

*“Convergence with IFRS is not just about switching over from one set of accounting & reporting standards to another.”*

The term “IFRS” has gained significant importance in the life of accountants as more and more countries are on the path of Convergence with/ adoption of International Financial Reporting Standards (IFRSs) issued by the International Accounting Standards Board (IASB). Currently, more than 100 countries such as countries of European Union, Australia, New Zealand, China and Russia currently require or permit the use of IFRS in their countries. Apart from India, countries like Japan, Sri Lanka, Canada and Korea have also committed to adopt/ converge to IFRS in near future. United States of America has also taken-up convergence projects with the IASB with a view to permit filing of IFRS-Compliant Financial Statements in the US Stock Exchanges without requiring the presentation of reconciliation statement.

The term IFRS is newer and expanded version of IAS's and includes standards/ interpretations issued by IASB and International Accounting Standard Committee (IASC).

India has adopted convergence route instead of adoption and earlier declared a phased approach for convergence whereby IFRS was applicable to certain companies

(thresholds were defined) for accounting year commencing on or after April 1, 2011 and remaining phases were to be followed. As part of convergence exercise, the Indian Accounting Standards (Ind-AS) were issued which are in line with global IFRS except certain carve outs.

Currently, Indian authorities have deferred IFRS convergence till further announcement. However, recent changes in accounting are helping in bridging gap between current Indian Accounting Standards and proposed Ind-AS such as

- New Schedule VI which is applicable for accounting period commencing on or after April 1, 2011 is more in line with the presentation requirements of Ind-AS or Global IFRS;
- Voluntarily adoption of Accounting Standards on Financial Instruments is permitted unless contradicts to existing mandatory Accounting Standards; and
- Voluntary adoption of IFRS is permitted for a listed company in India to prepare its consolidated financial statements/ results.

Convergence with IFRS is not just about switching over from one set of accounting & reporting standards to another. It takes the description of a revolution because conceptual differences are expected having impact over business transactions, IT systems etc. Even though a country may not have precedence for such accounting convergence/ adoption in recent past, leveraging experience of countries which have already adopted IFRSs will be of great importance for effective and successful transition.

Conversion experience in Europe, as well as Asia and Australia, shows that conversion projects often take more time and resources than anticipated. Historically, that has led some companies to rush and risk mistakes or outsource more work than necessary, driving up costs and hindering the embedding of IFRS knowledge within the company.





# First Impression with IFRS



At the same time, conversion brings a one-time opportunity to comprehensively reassess financial reporting and take "a clean sheet of paper" approach to financial policies and processes. Its more about a complete business and financial strategy to adopt international standards which is expected to be a long drawn process, depending upon the nature of business, volume of operations, countries of operations (domestic and foreign), group structure (subsidiaries, associates, joint ventures), growth strategy (organic or inorganic), level of computerization, technical skill levels of staff members and many other such factors, involving investment of time and resources.

There is no comprehensive "how-to" manual available, because each company will proceed according to its own unique needs and cost considerations. Similar to any other significant transition or change, the

convergence strategy for each entity will be different but will revolve around following categories:

- Forming a core implementation team responsible for the project with sufficient amount of allocated time;
- Performing impact assessment of new accounting rules of various accounting areas;
- Mapping impact assessment to financial statements, processes (including IT systems), policies, business transactions including contracts etc.
- Timely and effective communication of impact to all stakeholders such as shareholders, board of directors, owners of processes getting significantly impacted;
- Implementing and incorporating required changes in financial statements, processes (including IT systems), policies, business transactions including contracts etc.

Therefore, it is important to consider IFRS as any other significant change in an organization and accordingly, it is experienced that entities who have applied robust change management process may have taken longer time but was able to converge/ adopt new standards more effectively.

From accounting perspective, IFRS will bring some fundamental changes to accounting rules:

such as moving away from rules based accounting to "Substance over form" based accounting, more use of fair valuation compared to historical cost accounting, more explicit guidance on accounting of certain areas (such as business combinations, share based payments etc.) and expanded presentation and disclosures.

IASB is still working on various improvement projects and accounting for certain areas such as financial instruments, revenue recognition, leases etc are expected to undergo fundamental changes and therefore, standards issued till date is not an end to the journey of creating global quality accounting standard but a pit stop and next lap may bring more challenges in terms of accounting.

***"Conversion projects often take more time and resources than anticipated."***





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## Clarification regarding number of Tax Audit Assignments u/s 44AB

The ICAI Council, at its 311th meeting held recently, has clarified that audit prescribed under any statute which requires the audit report in the form as prescribed under Section 44AB of the Income-tax Act, 1961 shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in Section 44AB of the Income-tax Act, 1961. For instance, audit under Section 44AD, under DVAT, 2004 (for turn-

over between Rs. 40 lakh and Rs. 60 lakh), etc., will not be considered for inclusion in the current limit of 45 audits. The said clarification has also been hosted on the Institute website



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