

IN THE NEWS

January 2010

1. Government of India signs revised Double Taxation Avoidance Agreement (“DTAA”) with Finland

India and Finland have, on January 16, 2010, signed a revised agreement and protocol for avoidance of double taxation, and prevention of fiscal evasion with respect to tax on income.

As per the revised DTAA, withholding tax rates have been reduced on dividends from 15% to 10%, and on royalties and fees from 15% or 10% to a uniform rate of 10%. Furthermore, it not only expands the ambit of the Article concerning Exchange of Information but also provides for effective exchange of information in line with the current international standards. The Article inter-alia provides that a Contracting State shall not deny furnishing of the requested information solely on the ground that it does not have any domestic interest in that information or such information is held by a bank. To prevent misuse of the DTAA, an Article for Limitation of Benefits to the residents of the contracting state has been added to the revised agreement.

Other features of the revised DTAA include, increasing the scope for relieving double taxation through recourse to the Mutual Agreement Procedure, and addition of a new Article to ensure assistance in collection of taxes when such taxes are due under the domestic laws and regulation.

2. SEBI signs “Capital Market Collaborative Agreement” with Securities Commission of Malaysia

Securities and Exchange Board of India (“SEBI”) signed a “Capital Market Collaborative Agreement” (“**Agreement**”) with the Securities Commission of Malaysia on January 20, 2010.

SEBI and Securities Commission, Malaysia had initially, in 2001, entered into a Memorandum of Understanding in relation to assistance and mutual cooperation which focused on exchange of information and mutual assistance for enforcement of securities laws and regulation. The present Agreement incorporates measures to facilitate the development of deeper and broader capital markets and greater cross-border activities between the capital markets. The Agreement aims to attain closer regulatory co-operation in a mutually beneficial manner.

3. No Tax holiday for output boost of non-exemption items

The finance minister, vide Circular No. 912/02/2010-CX dated January 22, 2010, clarified that tax exemption will not be available for manufacture of goods kept out of the exemption list. Area-based exemption is available to the units in the specified areas in the North-East region, Jammu & Kashmir, Himachal Pradesh and Uttarakhand under different notifications. The exemption is applicable to the new industrial units set up after the specified date and also to the existing units which have undertaken substantial expansion by way of increase in installed capacity by not less than 25%.

According to the circular, exemption can be availed only on substantial expansion of the installed capacity of the specified goods. To illustrate, if a unit is making tobacco product (say-gutkha, a non-specified goods, which is not allowed benefit of exemption) and also iron and steel articles (specified goods, which are allowed benefit of exemption) only when units increase installed capacity of iron and steel articles by 25%, benefit would be available. But if it increases production of gutkha by 100%, then it would not get the benefit.

The Central Board of Excise and Customs has issued this clarification to prevent misuse of area-based exemptions.

4. Finance Ministry asks for clarification on Press Note 1 of 2005 from DIPP

The Ministry of Finance (**“MoF”**) has asked the Department of Industrial Policy and Promotion (**“DIPP”**) for clarification on Press Note 1 of 2005 (**“PN 1”**).

PN 1 of 2005 provides for a foreign company to get a “no objection” certificate from its Indian JV partners if it wants to pursue, alone or with other partners, in the same field of business. PN 1 was intended to be applicable only on JVs entered into prior to 2005. However, DIPP has neither renewed the series nor made it clear whether PN 1 is valid for JVs entered into after 2005. This has forced companies to either make a personal hearing to Foreign Investment Promotion Board (**“FIPB”**) or first approach the court and then following court orders approach the FIPB for hearing, and that too in case there is contention for JVs made after 2005.

The objection against PN 1 has been recently raised in two cases, namely Mercer Incorporation, New York and Putzmeister Concrete Pumps, Germany. Putzmeister, applied to venture into the business of concrete pumps which was opposed by Putzmeister Indian Private Ltd. Thereafter, Putzmeister India approached the Delhi High Court, which has asked FIPB to look into the matter. Additionally, Mercer Incorporation applied for an approval from FIPB for venturing into insurance broking, which was opposed under PN 1 by their Indian partner, Ramphal Trust, which is also an insurance broking firm.

Furthermore, as neither the commerce ministry nor the MoF have any mechanism to monitor the viability of such JVs, the MoF has also sought clarity on the monitoring of such JVs from time to time.