

IN THE NEWS

March 2010

1. **Tax Deduction at Source at 20% from April 1, 2010 on foreign companies if no PAN**

With effect from April 1, 2010, all payments to foreign companies that do not have a Permanent Account Number (“**PAN**”) card will be subject to a minimum Tax Deduction at Source (“**TDS**”) rate of 20%. This change follows the budget announcement in March 2009 and the press release in January 2010 by the Central Board of Direct Taxes by introducing section 206AA under the Income Tax Act, 1961 (“**Act**”). Under the change introduced, all foreign companies will have to apply for a PAN, else bear a TDS rate of 20%.

There are quite a few concerns that have arisen in March 2010 regarding this provision. The concerns at the forefront are with regard to creation of a permanent establishment in India where the foreign company applies for a PAN and provides the address of its representative assessee in India. Other concerns relate to the legality of the overriding effect of section 206AA to the applicable DTAA with different countries applicable under section 90 of the Act.

2. **Mobile number portability and 3G auction, still awaited**

The introduction of Mobile Number Portability (“**MNP**”) for Indian mobile subscribers has been pushed back once again, with the Department of Telecommunications (“**DoT**”) now providing that the service will not be inaugurated until June 30, 2010. This follows the DoT’s decision to assess the readiness of mobile operators’ networks to handle MNP, and is the second significant delay to the launch of the service. MNP was previously scheduled for implementation by end-December 2009 it was pushed back to March 30, 2010, again over concerns that operators were not ready. The government has called on cellular service providers to ensure that they are conducting any relevant tests to prepare for MNP introduction, while it is also pressing operators such as Bharat Sanchar Nigam Ltd (BSNL), Mahanagar Telephone Nigam Limited (MTNL) and Uninor, which have reportedly yet to install MNP gateways, to do so by May 15, 2010.

Further, in connection with the much-awaited 3G auction, the DoT on March 31, 2010 published a list of per-qualified bidders confirming the expectations that the spectrum auctions will take place in April 2010. Meanwhile, the Telecom Regulatory Authority of India also issued a pre-consultation on “IMT-Advanced (4G) Mobile Wireless Broadband Services” to add to the confusion.

3. **New FDI Policy framework**

A new foreign direct investment (“**FDI**”) policy framework has been released by the government to rescind all previous FDI Press Notes and consolidate all FEMA, RBI Circular and Press Note regulations into one consolidated document. The said document has been released on March 31, 2010 and is expected to simplify the policy and afford greater clarity of understanding of foreign investment rules among foreign investors and sectoral regulators. The

new framework is a compilation of existing guidelines, and it is proposed that it will be updated every 6 months. Further, this consolidated document will be superseded by a Press Note to be issued on September 30, 2010, to ensure that the framework document on FDI policy is kept updated.

Though this is a step in the right direction, and offers much clarity on certain issues such as “wholesale trading” and “credit,” there is still ambiguity surrounding Press Notes 2, 3 and 4 of 2009, for which no clarification has been provided. One can only hope that once the new Press Note is released in September 2010, will the position on ‘ownership control and management’ be clarified.

4. SEBI tightens disclosure requirements for listed companies

SEBI has further tightened disclosure requirements by requiring companies to submit auditors’ certificate to the stock exchanges stating the accounting treatment for various items in case of merger or reconstruction proposals, in line with relevant accounting standards. Further, listed companies will have to detail balance sheet as a note to half-yearly results within 45 days from half-year end. Currently, shareholders have access to the balance sheet on an annual basis.

SEBI has justified imposing the strict disclosure requirement in light of the aftermath of the global financial crisis. According to SEBI, frequent disclosure has become imperative for the shareholders to assess the asset-liability position of companies so they can judge the solvency of the company at regular intervals and not at the year end.