

Note on

## **RECENT LEGAL DEVELOPMENTS**

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## TAXATION

### *Finance Bill 2011*

The Finance Minister, Mr. Pranab Mukherjee, presented the Finance Bill 2011 on February 28, 2011. Some of the key proposals of the Bill are as follows:

- Corporate tax rates are to remain unchanged.
- Surcharge on tax to be reduced from 7.5% to 5% in the case of domestic companies and from 2.5% to 2% in the case of foreign companies.
- The effective Minimum Alternative Tax (“MAT”) to be increased from 19.93% to 20% in case of domestic companies and from 19% to 19.44% in case of foreign companies.
- Limited Liability Partnerships to pay MAT at the effective rate of 18.5%.
- Developers of Special Economic Zone to pay MAT effective from FY 2011-12.
- Dividends received by a domestic company from its overseas subsidiary to be taxed at a rate of 15%.
- No change in the standard rates of customs duty, excise duty or service tax. However, service tax imposed on two new services viz (i) services by air-conditioned restaurants having a license to serve liquor; and (ii) short term accommodation in hotels/ inns/ clubs/ guest houses, etc. Furthermore, scope of “services” has been increased to include health services, legal services, life insurance services and business support services.

### *Point of Taxation Rules*

By a notification dated March 01, 2011 issued by the Government of India, it is proposed to introduce the Point of Taxation Rules, 2011 (**‘PT Rules’**). The PT Rules define the “point of taxation” to mean the point in time when a service shall be deemed to have been provided, thereby creating a deeming fiction for imposing the tax even prior to receipt of consideration for services, as is the case presently. The major amendment proposed to be brought about through the PT Rules is to link the payment of tax to the provision of services, raising of the invoice or payment for services provided or to be provided, **whichever is earlier**. However, as several tax payers expressed concerns about certain provisions, several amendments were carried out, pursuant to which, the determination of point of taxation was amended to such time as when an invoice for services is raised or when the consideration for the services is received, whichever is earlier. For certain services, the point of taxation was amended to such time as when payment was received.

The PT Rules came into force on April 01, 2011.

## LITIGATION

In *Iridium India Telecom Ltd. v. Motorola Inc.*, the Supreme Court of India has held that a corporation cannot claim immunity from criminal prosecution on the ground that it is incapable of possessing the necessary *mens rea* for the commission of criminal offences.

Iridium along with certain banks and financial institutions, made equity investments of approximately US\$ 70 million in Iridium Inc., an instrumentality of Motorola, Inc. based on representations made by the latter. Iridium subsequently brought criminal proceedings against Motorola for the offences of cheating and criminal conspiracy, alleging *inter alia* that the representations of Motorola, on the basis of which the investments were made, were false, dishonest, deceitful and fraudulent. The Bombay High Court quashed the criminal proceeding on the ground that a corporation, being a juridical person, is incapable of committing the offence of cheating since it cannot have the intention to deceive, which is the necessary *mens rea* for the offence of cheating.

On appeal, the Supreme Court held that a corporation is virtually in the same position as an individual and may be convicted of offences including those requiring *mens rea*. The criminal liability of a corporation will arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs.

## MEDIA & TELECOMMUNICATIONS

The Press and Registration of Books Act, 1867 (the “Act”) is proposed to be amended. Some of the key amendments are as follows:

1. New defined terms such as “publications”, “newspapers”, “magazines”, “journals”, “newsletter” and others are proposed to be included in the Act.
2. Internet editions of newspapers to be placed within the purview of the Act.
3. Terrorists and persons convicted of acts done against the security of the State to be prevented from bringing out publications.
4. Filing of annual statements by publishers are proposed to be made compulsory.

## FOREIGN EXCHANGE

### *Repeal of Press Note 1 of 2005*

The Government released the 3rd consolidated FDI policy circular (Circular 1 of 2011) laying down the FDI policy effective April 1, 2011. Under the latest policy document, the Department of Industrial Policy and Promotion (“DIPP”) has removed the requirement of prior approval in case of existing joint ventures/technical collaborations in the “same field”, which was imposed by Press Note 1 of 2005.

Circular 2 of 2010 reiterated this requirement and provided that where a non-resident investor has an existing joint venture/ technology transfer/ trademark agreement in India, as on January 12, 2005, new proposals in the “same field” for investment/ technology transfer/ technology collaboration/ trademark agreement would require (i) prior Foreign Investment Promotion Board approval; and (ii) a no-objection certificate from existing joint-venture partner/ technical collaborator.

## **COMPETITION LAW**

The Government of India has notified certain sections relating to the regulation of mergers and acquisitions under the Competition Act, 2002 (“**Competition Act**”). The notification will come into effect from June 1, 2011. Thereafter, all mergers, acquisitions and amalgamations that meet certain thresholds prescribed under the Competition Act would require mandatory pre-notification to the Competition Commission of India (“**CCI**”), and will not come into effect until 210 days from the date of filing or by order of the CCI, whichever is earlier. A detailed analysis of this development has already been provided in a special mailer.

## **CAPITAL MARKETS AND SECURITIES LAW**

The Securities Exchange Board of India (**SEBI**), through a circular dated March 31, 2011 (**Circular**) increased the existing limit of US\$5 billion by an additional limit of US\$ 20 billion for investments by Foreign Institutional Investors (**FII**s) in corporate bonds issued by companies in the infrastructure sector with a residual maturity of over five years. The Circular specifies that FIIIs are permitted to invest in unlisted bonds issued by companies in the infrastructure sector that are generally organised in the form of special purpose vehicles. Further, the Circular specifies that investments in such bonds will be subject to a minimum lock-in period of three years and cannot be sold to domestic investors. However, during the lock-in period, FIIIs are permitted to trade amongst themselves.